

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI

DAVID BONENBERGER,

Plaintiff,

vs.

Cause No. 4:12CV-21CDP

THE ST. LOUIS METROPOLITAN  
POLICE DEPARTMENT, et al.,

Defendants.

=====

TRIAL TRANSCRIPT OF TESTIMONY OF:  
SGT. DAVID BONENBERGER AND SGT. DEBORAH BOELLING

BEFORE THE HONORABLE CATHERINE D. PERRY  
UNITED STATES DISTRICT JUDGE

AUGUST 19, 2013, VOLUME 1

=====

APPEARANCES:

For Plaintiff:

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21  
22  
23  
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## INDEX

### Plaintiff's Witnesses:

#### Sgt. David Bonenberger

Direct Examination.....	1
Cross Examination.....	68
Redirect Examination.....	95

#### Sgt. Deborah Boelling

Direct Examination.....	100
Cross Examination.....	109

AUGUST 29, 2013

(Voir Dire and Opening Statements were had, but not transcribed.)

THE COURT: All right, plaintiffs may proceed with their evidence.

MS. PETRUSKA: Thank you, plaintiff calls Sergeant David Bonenberger.

THE COURT: All right, sir, would you step down here for the clerk to swear you in. You can proceed.

MS. PETRUSKA: Thank you, your Honor.

SGT. DAVID BONENBERGER,

being produced and sworn, testified as follows:

DIRECT EXAMINATION

BY MS. PETRUSKA:

**Q.** I know you stood, pointed, etc., to acknowledge yourself. Can you now formally introduce yourself to the jury?

**A.** David Bonenberger.

**Q.** Where are you currently employed?

**A.** The St. Louis Metropolitan Police Department.

**Q.** And how long have you been employed by the St. Louis Police Department?

**A.** Just under 20 years. I started there as a recruit in training on October 11, 1993.

1           **Q.**   What's your current rank in the department?

2           **A.**   I'm a Sergeant.

3           **Q.**   When were you promoted to Sergeant?

4           **A.**   March 18, 2009.

5           **Q.**   Can you explain to the jury your educational  
6 background?

7           **A.**   I have a Bachelor's Degree in Business  
8 Management with a minor in Economics.

9           **Q.**   Where did you receive that degree?

10          **A.**   Webster University.

11          **Q.**   When did you receive that degree?

12          **A.**   2001.

13          **Q.**   In your 20 years as police officer, could you  
14 briefly list your assignments with the department?

15          **A.**   Certainly, upon graduation from the police  
16 academy in February of 1994, I was assigned to District  
17 3. I spent just under five years there.

18                I was then transferred to District Number 5.  
19 I spent just under five years there, and was  
20 transferred to the Housing Unit, which is a uniformed  
21 division that patrols the public housing complexes.

22                From that assignment, I went into the police  
23 academy as an instructor for a little over a year.

24                While I was at the Housing Unit, I had also been  
25 detached to the Anti-Crime Division for a short period

1 of time, which is a plain clothes assignment.

2 Following removal from the police academy, I  
3 was transferred to District 2 for three weeks. Then  
4 promoted to Sergeant. I spent the last four and half  
5 -- little over four and half years as a street Sergeant  
6 in District 6.

7 **Q.** When you said you were an officer in District  
8 3 and 5, at the beginning of your career, does that  
9 mean you were a patrol officer?

10 **A.** Yes, uniformed patrol officer.

11 **Q.** What are the duties, if you can explain just  
12 briefly to the jury, the duties of a uniformed patrol  
13 officer?

14 **A.** Answer radio calls you are dispatched to,  
15 writing corresponding necessary incident reports,  
16 patrol to various areas that you are assigned to as a  
17 crime deterrent, visual deterrent, on crime.

18 From time to time, you would have to affect  
19 arrests of law violators. Basically, just help  
20 citizens if they are in need at the time of crisis when  
21 they call for assistance.

22 **Q.** Anything else you want to add before we move  
23 on?

24 **A.** I also had a different duty when I was in the  
25 third district. I was a field training officer. I was

1 certified as a driver's training instructor.

2 **Q.** Those were additional duties you had to being  
3 a patrol officer; is that correct?

4 **A.** That's correct. Those are additional.

5 **Q.** Could you briefly describe to the jury what  
6 your duties were in the housing unit?

7 **A.** Essentially the same as the district, except  
8 that it was to cover the four public housing complexes  
9 in the City of St. Louis.

10 **Q.** How about the Anti-Crime Division, what did  
11 you do in the Anti-Crime Division?

12 **A.** The Anti-Crime Division was a division that  
13 was a plain clothes operation. You worked in covert  
14 vehicles, for lack of a terminology, undercover cars,  
15 not marked police cars, things people wouldn't readily  
16 identify as police cars.

17 You look for violent crimes in progress,  
18 stolen automobiles was the focus, and try to affect the  
19 arrest of people committing the crimes in progress, and  
20 I was also the acting supervisor when my immediate  
21 supervisor was not there; or otherwise, indisposed as I  
22 was in District 5, in the Housing Unit as well.

23 **Q.** Before I have get into the academy, I know it  
24 jumps in your chronological service, but what do you do  
25 currently as a Sergeant in the district?

1           **A.** I supervise -- immediately supervise seven  
2 patrol officers that are assigned to my precinct.  
3 There are three other precincts in the district that  
4 have seven officers assigned -- seven or eight, if I  
5 remember correctly, at any given time; not only do I  
6 supervise my immediate subordinates, but also other  
7 officers that are working, insure that they follow  
8 rules, regulations, policies, procedures, State law,  
9 review the reports, make sure that they are prepared  
10 for duty in proper uniform. That they are following  
11 all of those policies and procedures.

12           I conduct annual performance appraisals of the  
13 seven officers -- or any officers that are directly  
14 assigned to me. I also patrol the street, and assist  
15 the radio calls to help the citizens out.

16           **Q.** Anything else you want to add before I move  
17 on. I am just checking?

18           **A.** Not that I can think of.

19           **Q.** Let me ask you this way, as a street sergeant,  
20 do you have any kind of accounting responsibilities?

21           **A.** No, I don't.

22           **Q.** I want to focus on the academy now. First,  
23 when were you assigned to the academy?

24           **A.** I believe it was January of 2008.

25           **Q.** How long were you there?

1           **A.** Just over a year. I was transferred out of  
2 the academy in late February of 2009.

3           **Q.** Who assigned you to the academy?

4           **A.** The Chief of Police.

5           **Q.** What were your duties when you were assigned  
6 full-time to the police academy?

7           **A.** I was responsible for court curriculum  
8 instruction primarily for the recruits in training. I  
9 specifically taught the patrol block, which is  
10 essentially teaching the recruits what the aspects are  
11 of patrolling in the city, in the department.

12                   I also taught the driver's training. I was  
13 responsible for the coordination of that program. I  
14 did the practical application block, which is role  
15 playing, with the recruits, trying to put them in mock  
16 situations that they may encounter on the streets. How  
17 they deal with that.

18                   I also taught firearms at the firearms range.  
19 I was instrumental in the department in purchasing a  
20 driving simulator. Currently, I was the only one, to  
21 my knowledge, certified to instruct on that apparatus.  
22 I authored and wrote the post-approved current driver's  
23 training block. I believe they still use it.

24                   I also authored the current inservice training  
25 tactical car stop, tactical vehicle stop block. That's



1 continuing education. The instructors at the academy  
2 also have the continuing education classes for current  
3 police officers on the street. We have to meet a  
4 minimum threshold of a certain amount of training  
5 hours. We have inservice for a three-year period going  
6 forward.

7 I also taught the active shooter class while I  
8 was in the academy. That had been authored by the  
9 assistant director at the time. I also did the -- we  
10 have a firearms simulator that's called the rapture  
11 laser shot 2000. It is a video with a photo sensor. I  
12 don't know what the proper terminology is, but it has  
13 two beams of light instead of bullets that targets on  
14 the screen. It is a whole training block. People go  
15 through that. I authored that. I don't know if they  
16 still use it or not. That's about it.

17 **Q.** I want to make sure I'm clear. So based on  
18 your testimony, is it my understanding that you taught  
19 both new recruits and seasoned officers?

20 **A.** Yes, it is. It wasn't just patrol officers.  
21 There was members of all ranks that had to go to  
22 continuing education class. Some of them were  
23 electives that people signed up for.

24 **Q.** Did you have any kind of special duties with  
25 respect to any classes -- new recruit classes at the

1 academy?

2 **A.** When I was there, I was assigned to the  
3 supervisor of class 0804, which instructors typically  
4 has the assignment role of being the class supervisor,  
5 where we are responsible for all of the logistics of  
6 the class.

7 **Q.** Anything else that you did as a class  
8 supervisor before I move on?

9 **A.** Basically, you supervise the entire academy  
10 class. If there is 40 recruits in the class, you are  
11 responsible for that class. You are responsible to  
12 make sure all of the paperwork for the recruits, all of  
13 their logistical issues are in order. Without going  
14 into what all the logistics are, there is a lot of  
15 forms, paperwork, you have to sign up for benefits,  
16 make sure beneficiaries are correct. Insure they all  
17 have driver's licenses so on, so forth, to make sure  
18 that everything is in order. You are responsible for  
19 that class up until the point they graduate.

20 **Q.** So it sounds like you had administrative  
21 duties with the class you supervised?

22 **A.** Absolutely.

23 **Q.** And other than what you have already described  
24 what you did that year, you were a full-time instructor  
25 at the academy, have you taught any other classes

1 through the academy?

2 **A.** Yes, I was first certified as a driver's  
3 trainer in December of '96. So shortly after that, I  
4 began teaching recruits, driver's training through the  
5 academy, while I was still in the district as an  
6 adjunct instructor.

7 I also taught and recertified people in the  
8 use of the taser, the electromagnetic sound device,  
9 that's used for a less forced option.

10 I also taught the ETS equipment, which is a  
11 basically a bait car. I don't know if anybody is  
12 familiar with bait cars on the jury. You put an  
13 electronic beacon, electronic monitoring device on the  
14 vehicle or other apparatus.

15 If it is tripped, you track it. I also  
16 instructed on the spike strips, the tire inflation  
17 device.

18 **Q.** So have you been teaching somewhat  
19 continuously through the academy since 1996?

20 **A.** Yes, ma'am.

21 **Q.** And what certifications do you have to teach  
22 at or through the academy?

23 **A.** I hold currently still a Missouri State  
24 generalist instructor certificate, which allows me to  
25 teach through the State of Missouri in any training

1 academy. I also have a driver's trainer instructor  
2 certification from the safety service center that I  
3 received in September of '96.

4 I also have a Department of Homeland Security  
5 driver's training instruction certificate I received in  
6 2008 from the Federal Law Enforcement Training Center  
7 in Glenco, Georgia.

8 I am also certified in taser instruction with  
9 respect to deployment and UTS equipment.

10 **Q.** Who paid for all of the certifications?

11 **A.** The department, I believe.

12 **Q.** It sounds like you have been doing the  
13 driver's training the longest; is that correct?

14 **A.** Yes.

15 **Q.** With respect to the driver's training, is that  
16 only to new recruits, or does that also involve  
17 experienced officers?

18 **A.** It also involves the current experienced  
19 officers in two ways. If you have the misfortune of  
20 being involved with a department accident with a police  
21 vehicle, department vehicle, there is a board that's  
22 called the Department Accident Review Board. They pass  
23 a ruling on whether or not you are at fault, for a lack  
24 of a better terminology.

25 It is called a chargeable or nonchargeable

1 accident. Nonchargeable, being basically they didn't  
2 do anything wrong, or whatever the circumstances are.  
3 Chargeable being like where you are at fault, or there  
4 was some issues that have to be addressed.

5 So what the department does is they have  
6 people that have had chargeable accidents go through a  
7 driver refresher course, and I was responsible for  
8 teaching that from time to time.

9 And also a few years ago, the department  
10 initiated an inservice driving class for all inservice  
11 police officers, not as a punitive thing, but a  
12 refresher for training. I was utilized to conduct  
13 those classes as well.

14 **Q.** You said that was in the last two to  
15 three years, if I remember correctly?

16 **A.** If my memory serves me correct, yes, ma'am.

17 **Q.** Okay. Would it be fair to say that based upon  
18 your own experience and training, that you had a number  
19 of opportunities to observe the various instructors at  
20 the academy?

21 **A.** Yes, I would say that.

22 **Q.** How many years have you had an opportunity to  
23 observe or watch how the academy is being run?

24 **A.** Since I was first utilized, was a driver's  
25 training instructor, after I received the certification

1 in December -- I'm sorry, excuse me, December of 1996.

2 Q. Based upon your own experiences and training  
3 and opportunities said, would you believe that you  
4 would be able to effectively evaluate those that are  
5 responsible for training at the academy?

6 MS. TUCKER: Your Honor, I object. That calls  
7 for speculation.

8 THE COURT: I'm going to overrule it. I'm not  
9 sure exactly why you are going there. I'll allow you  
10 to answer this one.

11 THE WITNESS: I believe I would, ma'am.

12 Q. (By Ms. Petruska) And why do you believe you  
13 would be able to effectively evaluate officers at the  
14 academy -- I'm sorry, instructors at the academy?

15 MS. TUCKER: I object, once again, relevance,  
16 speculation.

17 THE COURT: Overruled.

18 THE WITNESS: Because I have been involved  
19 with training. It has been my passion, while on the  
20 police department, I have been directly involved with  
21 teaching since late 1996. I have been an instructor at  
22 the academy. I have been a driver's training  
23 instructor. I have seen the instructors that do the  
24 inservice training. I have been through the classes.  
25 I have taught the classes. So I think I would

1 definitely do that.

2 **Q.** You mentioned earlier that one of your extra  
3 duties, while you were a police officer, was being a  
4 field training officer; is that correct?

5 **A.** Yes, ma'am.

6 **Q.** Could you explain to the jury what a field  
7 training officer is or does?

8 **A.** Sure, a field training officer is the first  
9 line of training once you graduate from the police  
10 academy. Every recruit, once they pass the basics of  
11 the teaching academy, are assigned to a field training  
12 officer in the district that they are assigned, and it  
13 is your responsibility, as a field training officer, to  
14 properly train the newly graduated recruits, the new  
15 police officers, how to be a police officer. Insure  
16 they follow the proper procedures, proper rules, follow  
17 the laws obviously.

18 For lack of terminology, hold their hand for  
19 the first several weeks, since they have embarked on  
20 this new career. You are specifically responsible for  
21 evaluating them. You have to complete evaluations of  
22 these recruits that just graduated as police officers,  
23 and you have to insure that they are the best they can  
24 be.

25 You know, we want the best police officers. I

1 might be a little harsh on people, because I demand  
2 what was demanded of me. I want them to be as --  
3 that's not what you really asked me, I apologize.

4 THE COURT: Let her ask you a new question.

5 Q. (By Ms. Petruska) Okay. Anything else you  
6 would describe as duties as a field training officer?

7 A. Frequently as a field training officer, you  
8 would be asked to supervise recruits or situations  
9 until the sergeant got there.

10 The field officers, infield trainers look to  
11 you as the teacher as like you do in school. You have  
12 questions about something, you ask your teacher. There  
13 is times when you would train more than one new  
14 officer. You may have two or three officers riding  
15 with you and teaching them during the same eight hour  
16 shift.

17 Q. How long did you serve as a field training  
18 officer?

19 A. Sometime in 1997, I believe it was earlier,  
20 mid '97, when I was first certified as a field training  
21 officer, and I served in that capacity up until the  
22 time I was transfer to the Housing Unit which was  
23 February of 2003.

24 Q. Is there any particular reason that you were  
25 transferred to the Housing Unit and ended your time as



1 a field training officer?

2 **A.** It didn't end my time as a field training  
3 officer. I maintained my field training officers  
4 status. The reason I didn't train any new police  
5 officers while assigned to the Housing Unit was because  
6 the Housing Unit was a specialized unit that there were  
7 finite parameters on who could be assigned there, and  
8 newly graduated recruits to be field trained would not  
9 be assigned to a Housing Unit.

10 I kept my field training status up until the  
11 time I was promoted in 2009.

12 **Q.** Are sergeants allowed to be field training  
13 officers?

14 **A.** I don't know if allowed is the right term, but  
15 supervisors are not field training officers. They are  
16 supervisors.

17 **Q.** How is it that you were selected or got the  
18 position of field training officer?

19 **A.** I was asked.

20 MS. TUCKER: Your Honor, may I please object  
21 as to relevance and speculation.

22 THE COURT: Sustained.

23 **Q.** (By Ms. Petruska) You said you were an  
24 instructor at the academy for about a year; is that  
25 correct?

1           **A.** That is correct.

2           **Q.** When you were at the academy, did you have  
3 contact with the Chief and Lieutenant Colonels?

4           **A.** From time to time.

5           **Q.** How often would that occur?

6           **A.** Maybe once a week or once every couple of  
7 weeks.

8           **Q.** How would it come about that you would have  
9 contact with the Chief and Lieutenant Colonel at the  
10 academy?

11          **A.** They would come by the academy from time to  
12 time to check on status, see how things were going, ask  
13 about the recruit classes, ask if just about issues as  
14 far as equipment resources, things of that nature.

15          **Q.** When you were a street officer, did you have  
16 any contact with the Colonel rank staff at the  
17 department?

18          **A.** Very rarely.

19          **Q.** And as an instructor at the academy, did you  
20 have contact with the Board of Police Commissioners?

21          **A.** Yeah, from time to time, but it was only to  
22 say, acknowledge, say hi, when there was graduations  
23 occurring.

24          **Q.** As a street officer, did you ever see the  
25 Board though?

1           **A.**   Never.

2           **Q.**   Let me -- I'm not sure I clearly  
3 differentiated this. You are now a Sergeant?

4           **A.**   Yes, ma'am.

5           **Q.**   As a Sergeant on the street, does it give you  
6 access to the Colonel staff, now that you are a higher  
7 rank?

8           **A.**   No, only in extraordinary circumstances.

9           **Q.**   If you would have gotten the position of  
10 Assistant Academy Director, would you have considered  
11 that a promotion?

12           MS. TUCKER: I object, relevance and  
13 speculation.

14           THE COURT: I'm going to let him testify to  
15 this. This is a contested issue in the case. He can  
16 testify, go ahead.

17           **Q.**   (By Ms. Petruska) The question before you is  
18 would you have considered -- if you would have gotten  
19 the Assistant Director position, would you have  
20 considered it a promotion?

21           **A.**   Yes.

22           **Q.**   Why is that?

23           **A.**   It is a high-profile position. The Assistant  
24 Director is not only responsible for teaching, but also  
25 all of the administrative duties that come with running

1 the operational dynamics of the training facility. The  
2 training academy is the first step in your career as a  
3 police officer. I believe it to be the most important  
4 step.

5 With that, if you're tasked with or given the  
6 greater responsibility of seeing to it that that  
7 operational dynamic is best, you are going to have an  
8 opportunity to come in contact with command rank  
9 officers, Captains and above Captains, Colonels, Chief,  
10 that are going to get an opportunity to see how your  
11 work ethic is, and how you work.

12 If they are impressed by that, if you do what  
13 they think is the best thing, and succeed you have --

14 MS. TUCKER: Your Honor, could I please object  
15 to the witness going on and on.

16 THE COURT: Sustained. It is getting -- this  
17 has to be in question and answer form. He is going on  
18 and on.

19 Q. (By Ms. Petruska) Any other reasons that you  
20 would consider the assignment to the academy, Assistant  
21 Academy Director position a promotion?

22 MS. TUCKER: Once again, your Honor, I object  
23 to the relevance.

24 THE COURT: Overruled.

25 Q. (By Ms. Petruska) If there is anything you

1 want to add, just add it now?

2 **A.** No.

3 **Q.** Sergeant Bonenberger, how did you learn about  
4 the opening of the Assistant Academy Director position?

5 **A.** I read it on a department distributed e-mail.

6 **Q.** Let me show you --

7 THE COURT: The jury can see both of the  
8 monitors. It has been admitted. That's fine.

9 MS. BARTH: This monitor is off.

10 THE COURT: The big monitor is not working.  
11 Did it come on. It worked earlier this morning when we  
12 tested it.

13 MS. PETRUSKA: There it goes.

14 THE COURT: Now, the other one is not on.  
15 That happens. We test it right before the jury trial  
16 starts, and then the first time we use them, they don't  
17 work. Then they will work after that.

18 Many of these exhibits have been received into  
19 evidence. If you seeing it, it is in evidence. I'm  
20 not going to tell you otherwise. Okay, go ahead, Ms.  
21 Petruska.

22 MS. PETRUSKA: Thank you, your Honor.

23 **Q.** (By Ms. Petruska) Actually, I want to direct  
24 your attention to the second page of Exhibit 2, and ask  
25 you if that describes the job duties of the Assistant

1 Academy Director. At least, when the position was  
2 posted?

3 A. Yes.

4 Q. Then as I go down further, on that e-mail,  
5 that further describes the minimal requirement for the  
6 job; is that correct?

7 A. Yeah, at the time it was posted, it does.

8 Q. Do you recall when that position was posted?

9 A. I believe it was September 24, 2010.

10 Q. And what did you do when you learned that the  
11 Assistant Academy Director position was open?

12 A. I called Lieutenant Muxo.

13 Q. And I know the jury has met Lieutenant Muxo as  
14 well, but describe to the jury who Lieutenant Muxo is?

15 A. He is the director of the academy. He was  
16 then. He is today.

17 Q. Did you know Lieutenant Muxo when you called  
18 him about the Assistant Director position?

19 A. Yes.

20 Q. How did you know Lieutenant Muxo?

21 A. When I went through the academy in '93, he was  
22 the defensive tactics training instructor at the  
23 academy; and throughout my career, we had had occasion  
24 to interact in a professional job-related capacity.

25 Q. Do you know when you called Lieutenant Muxo?

1           **A.** I don't know the specific date.

2           **Q.** Do you know if it was before or after you  
3 applied for the position?

4           **A.** It was before I applied for the position.

5           **Q.** And why did you call Lieutenant Muxo?

6           **A.** Well, I knew that I didn't have the three  
7 years supervisor experience in my rank, and it was the  
8 job that I always wanted, and I thought I would call  
9 him and see if my acting Sergeant capacity in the past  
10 and all of my experience would allow for superseding  
11 that requirement.

12                   I know in the past, that the department has  
13 transferred people into the jobs that didn't meet the  
14 minimum requirements as they are supposed to.

15           **Q.** Any other purpose for calling him?

16           **A.** No, just to get a feel for it.

17           **Q.** What did Lieutenant Muxo tell you when you  
18 asked about the open Assistant Academy Director  
19 position?

20           **A.** He told me not to bother applying for it,  
21 because the job was going to a black female.

22           **Q.** What did you do when Lieutenant Muxo told you  
23 that the position was going to a black female?

24           **A.** I asked him why.

25           **Q.** And did he tell you why?

1           **A.**    Yes.

2           **Q.**    What did he tell you?

3           **A.**    He told me that it was out of his hands. That  
4 it was not his decision, and Colonel Harris would make  
5 the decision.

6           **Q.**    Was there anything else involved in that  
7 conversation about the Assistant Academy Director  
8 position?

9           **A.**    There may have been some other talk, but I  
10 don't recall what it was. It was a very brief  
11 conversation at that point.

12          **Q.**    How long would you say that conversation  
13 lasted?

14          **A.**    Three, three to five minutes maybe.

15          **Q.**    Did you tell anyone at the department about  
16 your conversation with Lieutenant Muxo?

17          **A.**    I told my wife.

18          **Q.**    And when did you tell her?

19          **A.**    Right after the phone call.

20          **Q.**    Did you tell anybody else besides your wife,  
21 within the department, about that particular  
22 conversation?

23          **A.**    Not directly.

24          **Q.**    When you say not directly, what do you mean?

25          **A.**    There was an e-mail that was sent to me from a



1 colleague of mine that had told me that I should put --  
2 essentially actually put in for the job. I would be  
3 the best qualified for it. I should talk to Lieutenant  
4 Muxo.

5 I responded back by e-mail saying I already  
6 had, and they already have somebody else picked out for  
7 the job.

8 **Q.** And I'm going to show you Plaintiff's  
9 Exhibit 10, and ask you if that's the e-mail with  
10 Sergeant Dandridge that you just mentioned?

11 **A.** It is.

12 **Q.** Does Exhibit 10 tell you, or state when you  
13 sent those e-mails?

14 **A.** It has the date of September 26, 2010.

15 **Q.** Was that before or after you applied for the  
16 position?

17 **A.** It was before I applied for the position.

18 **Q.** And in this first line at the top here, is  
19 that what you are referencing a moment ago. "I already  
20 spoke to him," him being Lieutenant Muxo, "there is  
21 somebody else already picked for the job?"

22 **A.** Yes.

23 **Q.** Did you apply for the open position anyway?

24 **A.** I did.

25 **Q.** And why did you apply for the position?

1           **A.** Well, it was my -- I wanted to try to get the  
2 job that I always wanted in the hopes that maybe  
3 something would fall through with the person they had  
4 picked out for it.

5           **Q.** And when did you apply for the open position?

6           THE COURT: If you are finished with the  
7 exhibit, do you mind taking it down?

8           MS. PETRUSKA: Certainly.

9           THE COURT: I'm sorry, the question was when  
10 did you apply for the position?

11           THE WITNESS: It was sometime shortly after  
12 that in the next few days. I believe it was on -- it  
13 was either the last few days of September or  
14 October 1st.

15           **Q.** (By Ms. Petruska) And before I move on,  
16 knowing that the position had already been -- somebody  
17 else had already been selected for the position, any  
18 other reasons that you decided to apply for it anyway?

19           **A.** Like I said, it was a dream job for me, and if  
20 something fell through with it, then hopefully I would  
21 be considered for it. Because it could be a career  
22 builder.

23           **Q.** Why would you consider the Assistant Academy  
24 Director position a career builder?

25           **A.** Because of the reasons I said earlier. It

1 puts you in contact with upper-ranking commanders,  
2 Captains and above that have exposure to you, and they  
3 are the decision-makers. They recommend you for future  
4 promotions.

5 Q. You have been with the department almost  
6 20 years, right?

7 A. Yes, ma'am.

8 Q. Based on your own 20 years of experience with  
9 the department, are there other assignments in the  
10 department that have that same career-building ability?

11 A. Certainly.

12 Q. What would you consider those other  
13 assignments to be?

14 A. Well, obviously assignments as an instructor  
15 at the academy, the Homicide Division, are regarded as  
16 the best detectives you have. The Intelligence  
17 Division, they work directly for the Chief of Police,  
18 and we have assignments where you can be detached to  
19 Federal agencies like the FBI, the Drug Enforcement  
20 Administration, and the Alcohol Tobacco and Firearms  
21 Unit.

22 Q. Why would you consider those particular  
23 assignments to be prestigious and career-advancing?

24 A. Well, to get those assignments, you are  
25 regarded as the best of the best. The best the

1 department has to offer, and you are in high-profile  
2 positions conducting very complex investigations, and  
3 you are -- you have exposure to higher profile  
4 incidents. It can also be very career-building, if you  
5 do a good job in those assignments.

6 You are working more directly for the  
7 decision-makers in the department, the Captains, the  
8 Colonels, and the Chief.

9 **Q.** I'm assuming -- actually, let me backup for a  
10 second. Have you put in for any other more prestigious  
11 assignments?

12 **A.** I have.

13 **Q.** Have you gotten them?

14 **A.** No.

15 **Q.** Which ones did you put in for?

16 **A.** Earlier in my career, I put in for the  
17 Homicide Division, also as a Sergeant. I had applied  
18 for Detective, Sergeant, Homicide Division, Anti-Crime  
19 Task Force is an assignment, Narcotics Division, the  
20 academy. I applied there three times before I finally  
21 got the position as an instructor there.

22 **Q.** I'm assuming that when you saw the position  
23 posting for the Assistant Academy Director, which was  
24 previously Exhibit 1, you looked at the requirements  
25 for the jobs and the responsibilities of the job?

1           **A.**    Yes.

2           **Q.**    I know you testified already you didn't have  
3 one of the requirements of the job, but based on that  
4 posting, did you feel that you could do -- you could  
5 perform the responsibilities of the job?

6           **A.**    Yes, I did, because in some -- at least one of  
7 the assignments or applications I made previously, I  
8 didn't meet the minimum qualifications, and they sent  
9 me back a response saying I didn't meet the minimum  
10 qualifications. I wouldn't be considered for that job.

11          **Q.**    Now, I'm focussing now on the duties of the  
12 Assistant Academy Director, okay?

13          **A.**    Yes.

14          **Q.**    Actually, I can put that back on there. It is  
15 my understanding what I'm now showing you as part of  
16 Exhibit 1 are the essential responsibilities, not the  
17 qualifications, but the responsibilities of the job?

18          **A.**    I'm sorry, I misunderstood you.

19          **Q.**    All right. Would it be -- do you believe you  
20 could have fulfilled these responsibilities?

21          **A.**    Absolutely.

22          **Q.**    Why is that?

23          **A.**    Because I have all -- I possess all of those  
24 skills and abilities. I have been an instructor at the  
25 academy. I'm able to know what it is like to be an

1 instructor there. I can teach. I possess a teaching  
2 certificate issued by the State. My educational  
3 background is such that I'm able to do all of the  
4 things. I have overseen the daily operations of the  
5 academy classes. I have written lesson plans that have  
6 been approved by the State. I have written other  
7 training agendas and apparatus. I have met with  
8 numerous people in the City, and the State, at the  
9 levels that I have to.

10 I have plenty of experience with the logistics  
11 and the administrative end of these things.

12 **Q.** How would the duties of a street Sergeant  
13 compare with the duties of the Assistant Director of  
14 the academy?

15 **A.** I don't think they really do.

16 **Q.** How is that? Can you explain to the jury why  
17 you don't consider them a comparable position?

18 **A.** You don't directly teach anyone, train anybody  
19 as a street supervisor, as a Sergeant on the streets.  
20 Although you do have to do some helping and coaching,  
21 which you would do with anybody.

22 But in the Academy Director position, you are  
23 basically running the academy, helping the Director  
24 out. In the streets, I'm running my own precinct with  
25 the assistance of other supervisors and the Watch

1 Commander, who then answers to the Captain.

2 I don't have any direct control of the  
3 operational dynamic of the platoon. Where at the  
4 academy, the Assistant Director, you would be pretty  
5 much the second in charge and absolutely would be  
6 governing how that operational dynamic worked out.

7 **Q.** Anything else you want to add before I move  
8 on?

9 **A.** No, ma'am.

10 **Q.** We have already established that you applied  
11 for the Assistant Director position, correct?

12 **A.** Yes, ma'am.

13 **Q.** Let me show you Plaintiff's Exhibit 3, and ask  
14 you first if that is your application for the Assistant  
15 Academy Director position?

16 **A.** Yes.

17 **Q.** And what did you state as your qualifications  
18 for that position?

19 **A.** Essentially everything I said earlier,  
20 currently post-certified as a general instructor in the  
21 State, certified by the Department of Homeland Security  
22 for a driver's training instructor, taser instructor,  
23 spike strip instructor, ETS instructor.

24 I was previously assigned to the academy as an  
25 instructor. Class supervisor for a class there. I

1 taught patrol, driver's training, practical  
2 application, firearms, taught the inservice training,  
3 authored the blocks of training for the driver's  
4 training program. The inservice tactical vehicle stop  
5 program, conducted the active shooter training, the  
6 field training officer.

7 I am just very passionate about the training  
8 environment, and that I want the most. I strive for  
9 the most realistic training that our officers can  
10 receive with limited resources.

11 **Q.** Essentially would Exhibit 3 be your listing of  
12 why you felt you were the most qualified applicant for  
13 the position?

14 **A.** Yes, ma'am.

15 **Q.** I believe I put Exhibit 3 up there for the  
16 jury. Your application also includes something called  
17 a personal profile; is that correct?

18 **A.** Yes, ma'am.

19 **Q.** Is a personal profile attached to any  
20 application for any position at the police department?

21 **A.** I believe it is.

22 **Q.** Can you explain to the jury, what is a  
23 personal profile?

24 **A.** It is basically a background of your  
25 employment history. It lists your badge number, your



1 department serial number, handcuff number, things like  
2 that, your dates of service, how long you have been  
3 there. What your date of rank was. What your  
4 educational background is. What your training  
5 background is. Basically, it is a department history.

6 Q. It is a snapshot of you, at least in terms of  
7 your employment with the department?

8 A. Yes, ma'am.

9 Q. And does a personal profile also list the  
10 awards and commendations of an officer?

11 A. It does.

12 MS. TUCKER: I object to the line of questions  
13 as to relevance.

14 THE COURT: Sustained.

15 MS. PETRUSKA: Judge, may I address that.

16 THE COURT: Yeah, come to the bench.

17 (Proceedings were held at sidebar, outside the  
18 hearing of the jury.)

19 THE COURT: Thank you.

20 MS. PETRUSKA: The policy for transfers talks  
21 about transfer selections are supposed to be made on  
22 the knowledge, skills, and ability of the officer, and  
23 we believe that the awards and commendations that  
24 Sergeant Bonenberger received prior to applying for  
25 this position show his knowledge, skills, and abilities

1 as part of the selection process.

2 THE COURT: Your question, does the personal  
3 profile list the awards of an officer, the objection is  
4 irrelevant.

5 MS. PETRUSKA: I'm going to ask next what his  
6 awards and commendations were.

7 MS. TUCKER: Your Honor, our position is this  
8 was an exhibit that the plaintiff produced to us that  
9 we objected to, because I agree the promotion does talk  
10 about qualifications he is awarded, and his  
11 commendations don't specifically set out the  
12 qualifications that she went through. The  
13 qualifications with regard to the certificates, and  
14 everything else he has obtained, which establishes his  
15 qualifications.

16 These awards and commendations are subjective  
17 opinions with regard to specific individual incidents,  
18 not necessarily whether he is fit to be or to be  
19 promoted to a particular position.

20 Also during the testimony of the all of the  
21 witnesses, they testified these awards or commendations  
22 specifically are not considered relied upon for  
23 promotion, because they are so subjective.

24 THE COURT: I thought the objection was to the  
25 form So it is clear, I thought the objection was to

1 that specific question. What is on this form, which to  
2 me, is a silly question. So I was sustaining it,  
3 because unless I knew some reason what's on the form is  
4 particularly relevant, it is not relevant.

5 I mean, the question is whether his  
6 qualifications are relevant or awards are relevant.  
7 That's a different issue. I think he is allowed to  
8 testify this is a promotion case. If he has awarded  
9 honors, I think he can testify in a promotion case.

10 I want to clarify this exhibit was on the list  
11 of exhibits I did receive into evidence this morning  
12 without objection.

13 MS. TUCKER: No, it was not.

14 MS. PETRUSKA: No, your Honor, that's why I  
15 wanted to lead into it, because I know.

16 THE COURT: Has it been up in front of the  
17 jury?

18 MS. PETRUSKA: No, well the summary of them  
19 through the personal profile is admitted, but these are  
20 actually --

21 THE COURT: What's the exhibit number?

22 MS. PETRUSKA: Nine.

23 THE COURT: Did you say the Exhibit 9?

24 MS. PETRUSKA: I knew she was going to object.  
25 I wanted to try to get it worked out before we pull it

1 down.

2 THE COURT: Did you show it to him.

3 MS. TUCKER: No. She hasn't shown it to the  
4 jury yet.

5 THE COURT: You can't do it if you have an --  
6 have an exhibit up on the screen. You start asking a  
7 witness does Exhibit X show whatever, but it is not  
8 what you have got up on the screen. That's misleading  
9 to the jury and Judge, which is more important.

10 There is an exhibit up on the screen you are  
11 asking about a different exhibit. So you can't have  
12 one in front of him and ask about a different one,  
13 unless you are very clear to everyone that's what you  
14 are doing. You might want to compare them. It is  
15 otherwise misleading. It implies to the jury you are  
16 talking about another piece of the form we haven't seen  
17 yet. This is a totally different question than I  
18 thought it was.

19 MS. PETRUSKA: I did ask about the personal  
20 profile. It does include awards and commendations.

21 THE COURT: I thought you just told me that.

22 (The proceedings returned to open court:)

23 THE COURT: Members of the jury, we are going  
24 to take a minute to discuss this. We need to discuss  
25 the exhibits and some other things outside your

1 hearing. I apologize for making you leave. We are  
2 going to send you out to the jury room. It shouldn't  
3 be very long. Stay in the jury room. It may be -- I'm  
4 hoping five minutes.

5 We will get this worked out, I think. I'm not  
6 understanding the lawyers very well here.

7 (At 2:30 p.m., the Proceedings stood in  
8 temporary recess.)

9 THE COURT: Go back to the lectern, okay, the  
10 first thing I'm going to ask is for the clerk to please  
11 put back on the screen what was on the screen before.  
12 Don't let anybody move anything. I want to see what  
13 the jury was seeing, and what I was seeing.

14 Okay, this document that the jury has been  
15 seeing, this document that has been shown to the jury  
16 right now, or it was right before we came up and had  
17 this. What is the exhibit number on the document  
18 that's on the screen right now?

19 MS. PETRUSKA: I believe number three, Judge.

20 THE COURT: That document has been received  
21 into evidence without objection.

22 MS. PETRUSKA: That is correct, Judge.

23 THE COURT: What is that document, it says  
24 application, and I believe you asked him, and you said  
25 attached to this is your personal profile sheet.

1 MS. PETRUSKA: That's correct, Judge.

2 THE COURT: Now, you have asked him the  
3 question through the objection was: Does the personal  
4 profile sheet show awards and commendations. That was  
5 the objection.

6 MS. PETRUSKA: Yes.

7 THE COURT: I don't think it is relevant what  
8 is shown on that necessarily. That's why we came to  
9 sidebar. You were going to tell me why it was relevant  
10 whether a personal profile sheet has awards and  
11 commendations. I still haven't heard the answer to  
12 that question.

13 MS. PETRUSKA: I was going to use it, Judge,  
14 for the foundation for him to explain to the jury what  
15 his awards and commendations were.

16 THE COURT: What is the document -- at  
17 sidebar, Ms. Tucker, you told me there was an objection  
18 to. If it is not the document that's up on the screen,  
19 how do I know what we are talking about. Go back to  
20 the lectern and answer the question with the mic.

21 MS. PETRUSKA: It would be separate,  
22 Exhibit 9, Judge, which is a physical copy of the  
23 awards and commendations. This would be the list.  
24 That's part of the personal profile.

25 THE COURT: So what are we fighting about.

1 Are we fighting about Exhibit 9, or about the question  
2 that drew the objection, or about whether I'm going to  
3 allow in evidence the fact that he has awards and  
4 commendations.

5 MS. PETRUSKA: I believe it is that.

6 MS. TUCKER: Your Honor, it would be  
7 Exhibit 9.

8 THE COURT: Well, the plaintiff has not  
9 offered or introduced it. Are you intending to ask to  
10 introduce Exhibit 9.

11 MS. PETRUSKA: I was, yes.

12 THE COURT: Why?

13 MS. PETRUSKA: Just to show it. Again, it is  
14 the certificate themselves, to show the awards and  
15 commendations he has received.

16 THE COURT: Would you hand those to the clerk.  
17 I want to hear your objection.

18 MS. TUCKER: Our position is we did not object  
19 to the Plaintiff's Exhibit 3, which is the commission's  
20 interview sheet that they -- it was basically their  
21 application.

22 THE COURT: Right.

23 MS. TUCKER: It does list the awarded  
24 commendations. That's that. Now that is a separate --  
25 that's a list of -- that's the actual certificate and

1       award. It is listed here. I don't think it is  
2       relevant now to show the actual certificate and award  
3       to the jury.

4               THE COURT: Are you objecting to anything on  
5       Exhibit 3?

6               MS. TUCKER: No, ma'am.

7               THE COURT: So she can ask him any questions  
8       about Exhibit 3?

9               MS. TUCKER: Yes.

10              THE COURT: Okay. So the objection to the  
11       question that led us to the sidebar is overruled. Now  
12       with regard to Exhibit 9, dealing with this in advance,  
13       which I didn't understand that's what we were doing.  
14       But now that I do understand that's what we are doing,  
15       the plaintiff wants to introduce this into evidence.  
16       Why are these -- if he can testify about them, and  
17       there is a list of them, why do you need to get  
18       Exhibit 9 into evidence, or why do you want it into  
19       evidence?

20              MS. PETRUSKA: You know, he can testify to  
21       that, but I would like the jury to have a physical  
22       exhibit when they are in the jury room seeing all his  
23       awards and commendations, because I don't know what  
24       they are going to take notes about.

25              THE COURT: I'm sustaining the objection.



1 These are awards of excellence, and they have a lot of  
2 information that's simply not relevant; and for all I  
3 know, somebody might decide well, there is all sorts of  
4 awards. They say things. There is a certificate.  
5 There is a narrative description of a bank robbery.  
6 There is something he got from a crusade against crime.  
7 It looks like a brochure, and they have stuff about  
8 other officers as well as him, referring -- it is a  
9 description, a narrative, these are not -- I don't  
10 think it is relevant.

11 MS. PETRUSKA: Judge, how would that be any  
12 different from the discipline records that they want to  
13 introduce.

14 THE COURT: I don't know. When the discipline  
15 records that they want to introduce are brought before  
16 me, we will discuss those at this time. I'm not going  
17 to let you have Exhibit 9. I'm sustaining the  
18 objection to Exhibit 9.

19 He can talk about what he has received. If  
20 they somehow imply that it is not true or something,  
21 then I might consider it. But I don't think all of the  
22 extra stuff in these awards is -- it is cumulative,  
23 and the narrative in it is not relevant to the case.

24 He can testify about his awards. So that's  
25 the ruling on the objection. Let's take a five minute

1 break. That way maybe we can take our afternoon recess  
2 a little later than normal. We will tell the jury five  
3 more minutes.

4 (At 2:45 p.m., the Proceedings resumed in open court.)

5 THE COURT: Thank you, members of the jury,  
6 that turned into sort of an earlier afternoon recess.  
7 We will probably take a short one before 5 o'clock.  
8 You may continue.

9 MS. PETRUSKA: Thank you, your Honor.

10 Q. (By Ms. Petruska) Sergeant Bonenberger, does  
11 Plaintiff's Exhibit 3, include a listing of your awards  
12 and commendations from the department?

13 A. It does. I believe there -- it might not  
14 contain them all.

15 Q. Could you explain to the jury what awards and  
16 commendations you received from the department prior to  
17 applying for the Assistant Academy Director position?

18 A. I have received a recognition award from the  
19 Department, Missouri Department of Mental Health,  
20 called the John J. Mactey (phonetically) award. I have  
21 received a recognition award from the Midwest Anti-Auto  
22 Crime Association.

23 I have received four officers of the month, an  
24 officer of the year, and I believe four department  
25 awards of excellence. Most recently, I was awarded the

1 medal of valor.

2 Q. Any other awards that you can remember?

3 A. Not that I can remember.

4 Q. What's the criteria for receiving the medal of  
5 valor?

6 A. I really don't know.

7 Q. So you don't know why you received it?

8 A. Well, I received it for an incident where I  
9 was involved in a shooting. It is supposed to be for  
10 extreme acts of bravery, but not to take anything away  
11 from it, I didn't really do anything more than my job.  
12 I was just doing what I was supposed to do.

13 It was very fortunate that somebody took  
14 notice and decided to give me an award. It is a true  
15 honor, but I was just doing my job.

16 Q. Let me ask you this way, this may cut short a  
17 lot of questions. Could you tell me the criteria for  
18 any of the awards that you received, not what you did,  
19 but the actual criteria for how they are awarded?

20 MS. TUCKER: I object, speculation.

21 MS. PETRUSKA: If you know.

22 THE COURT: Just a yes or no question.

23 THE WITNESS: No, I cannot.

24 Q. (By Ms. Petruska) I'm going to move on. Have  
25 you been evaluated in your performance as a police

1 officer?

2 **A.** Yes, I have.

3 **Q.** And how often are police officers evaluated by  
4 the department?

5 **A.** Annually every year.

6 **Q.** Let me show you Plaintiff's Exhibit 8. I  
7 believe I put that up on the stand for you as well, so  
8 that you could look through that without me having to  
9 flip through every page for the jury.

10 Let me ask you first to identify is  
11 Plaintiff's Exhibit A your employment evaluations for  
12 the five years preceding your application to the  
13 Assistant Director position?

14 **A.** Yes, it is.

15 **Q.** And let me blow this up for the jury a little  
16 bit, so they can see this. Basically a performance  
17 evaluation in the department lists three rankings for  
18 an Officer or Sergeant, improvement needed, meet  
19 standards, or exceed standards; is that correct?

20 **A.** Yes, ma'am, it is.

21 **Q.** How have you been rated. How are you rated as  
22 a police officer or Sergeant in the five years  
23 preceding your application to the Assistant Director  
24 position?

25 **A.** Either as meet standards or exceeds standards.

1           **Q.** Did you ever receive an improvement needed  
2 marking or rating?

3           **A.** Never.

4           **Q.** Would it be your position that Sergeant Taylor  
5 is less qualified than you for the Assistant Director  
6 position?

7           MS. TUCKER: Objection, speculation.

8           THE COURT: Sustained.

9           **Q.** (By Ms. Petruska) Did you have any other  
10 communications with Lieutenant Muxo about the Assistant  
11 Director position first before it was filled?

12          **A.** I sent him an e-mail.

13          **Q.** And do you recall what that e-mail said?

14          **A.** I believe it said that I went ahead and filled  
15 out the application and submitted it in the event that  
16 something fell through with the person that they had in  
17 mind.

18          **Q.** Did you send that e-mail before or after you  
19 applied for the Assistant Director position?

20          **A.** That one would have been after I applied for  
21 it.

22          **Q.** And let me show you Plaintiff's Exhibit 11,  
23 and first, first ask you if you recognize that that's  
24 the e-mail you just described to the jury?

25          **A.** Yes, I do.

1           **Q.** And if that particular e-mail shows that you  
2 sent it to Lieutenant Muxo on October 1st, 2010, at  
3 3:39 p.m., would you have any reason to disagree with  
4 that?

5           **A.** No, I would not.

6           **Q.** When you said you submitted it in case  
7 something fell through with the person they have in  
8 mind, have I just marked on the exhibit what you were  
9 just talking about?

10          **A.** Yes, ma'am.

11          **Q.** Did you have any other communications with  
12 Lieutenant Muxo about the Assistant Director position  
13 again before it was filled?

14          **A.** I did. I sent him another e-mail.

15          **Q.** What was the purpose or content of that  
16 e-mail?

17          **A.** That I hadn't heard anything about interviews  
18 that were going to be conducted, and I was going out of  
19 town during one of the weeks. I thought interviews may  
20 be conducted. So I sent him an e-mail letting him know  
21 that I wouldn't be available, and I wouldn't be able to  
22 receive phone messages at my residence.

23                 In the event that any interviews were  
24 scheduled, I didn't want to be marked as a no show in a  
25 message that was left at my house, and I didn't receive

1 it.

2 Q. Did you ever get a call about an interview?

3 A. No, I did not.

4 Q. Were you ever told why you were not called for  
5 an interview?

6 A. No.

7 Q. Did you have any communications with  
8 Lieutenant Muxo about the Assistant Director position  
9 after it was filled?

10 A. Yeah, yes, I did.

11 Q. And actually before I get into that, who would  
12 be involved in a decision to appoint an Assistant  
13 Academy Director?

14 MS. TUCKER: Objection, speculation.

15 THE COURT: Sustained.

16 Q. (By Ms. Petruska) Do you know typically how  
17 assignments or transfers are made in the department?

18 A. Yes.

19 Q. How are assignments or transfers typically  
20 made in the department?

21 MS. TUCKER: Objection, speculation.

22 THE COURT: What's the basis for your  
23 knowledge?

24 THE WITNESS: My -- the way they have been  
25 made throughout my 19 plus years on the police

1 department.

2 THE COURT: Have you been involved in making  
3 transfers and those things?

4 THE WITNESS: No, I have not.

5 THE COURT: I'll sustain it.

6 Q. (By Ms. Petruska) When did you learn that the  
7 Assistant Director position had been filled?

8 A. When it was broadcast on a department e-mail.

9 Q. And who filled the open Assistant Director  
10 position?

11 A. The Chief of Police.

12 Q. I'm sorry, who was selected to be placed in  
13 that position?

14 A. Sergeant Angela Taylor.

15 Q. And what is the race of Sergeant Angela  
16 Taylor?

17 A. She is African-American.

18 Q. For the record, you are white, correct?

19 A. Yes.

20 Q. What race is Sergeant Muxo?

21 A. He is Hispanic.

22 Q. What race is Colonel Harris?

23 A. He is African-American.

24 Q. What race is former Chief Isom?

25 A. He is also African-American.



1           **Q.** Did you do anything after you learned who  
2 filled the Assistant Director position?

3           **A.** Yes, I did.

4           **Q.** What did you do?

5           **A.** I filed a grievance and EEOC complaint.

6           **Q.** And you testified earlier that you applied for  
7 other positions in the department before like homicide,  
8 I believe, and you said some kind of Federal assignment  
9 that you didn't get; is that correct?

10          **A.** Yeah, the Federal assignment I didn't get was  
11 the supervisor for the Gang Task Force detached to the  
12 FBI.

13          **Q.** Are there any other positions you have applied  
14 for during your career that you didn't get?

15          **A.** Other than the ones I mentioned, I believe  
16 that covers them all.

17          **Q.** Okay. Did you file any type of grievance or  
18 complaint when you didn't get those other positions?

19          **A.** No.

20          **Q.** Did any of those other positions go to  
21 African-American candidates?

22          **A.** Yes.

23          **Q.** What positions -- what positions you didn't  
24 get went to African-American candidates?

25          **A.** I had applied for the FBI Supervisor position

1 twice, and on the first occasion, it went to an  
2 African-American male. When I had applied to the --

3 THE COURT: Go ahead.

4 THE WITNESS: --the Detective Sergeant in  
5 Homicide, that went to an African-American female, and  
6 I believe in the times that I have applied to the  
7 Narcotics Division, Anti-Crime, there were multiple  
8 openings. So I can't say for certain that --

9 MS. TUCKER: Your Honor, I'm going to object  
10 to plaintiff speculating with regard to anything he  
11 doesn't have direct knowledge on who is assigned to the  
12 various positions.

13 THE COURT: I'm confused too. I thought you  
14 said the only two you applied for were the homicide and  
15 the Gang Task Force. Didn't he just testify to that?

16 MS. PETRUSKA: I think I said that, and he  
17 responded that there were others that he had mentioned  
18 earlier. I can clarify that.

19 **Q.** (By Ms. Petruska) Why don't you list all of  
20 the positions you applied for, and you didn't get again  
21 to avoid any confusion?

22 **A.** Sure. The FBI Gang Task Force Supervisor, the  
23 Detective Sergeant in Homicide, as well as when I was a  
24 patrol officer, I applied for the Detective position  
25 there, Anti-Crime Division, the academy on three

1 different occasions, prior to the fourth time, when I  
2 received it, the Intelligence Division, and the  
3 Narcotics Division, I believe.

4 **Q.** And you testified that on at least two of the  
5 occasions, an African-American candidate was selected  
6 over you; is that correct?

7 **A.** Yes, ma'am.

8 **Q.** Let me show you Plaintiff's Exhibit 13, and  
9 ask you if that is the grievance you filed after you  
10 didn't get the Assistant Director position?

11 **A.** Yes, ma'am.

12 **Q.** I want to particularly direct your attention  
13 to the section of your grievance that talks about a  
14 fair solution to my grievance is, do you see that?

15 **A.** Yes, ma'am.

16 **Q.** Do you also see in the fair solution to my  
17 grievance is that you asked for: "Grant me an  
18 interview for the position with a member of the EEOC  
19 present during the interview?"

20 **A.** Yes, ma'am.

21 **Q.** And did you also request that the department  
22 conduct fair and unbiased interviews with qualified  
23 candidates with a member of the EEOC present during all  
24 of the interviews?

25 **A.** Yes, ma'am.

1           **Q.** Can you explain to the jury why you made that  
2 request in your grievance?

3           **A.** Because I believed that I had been  
4 discriminated against.

5           **Q.** Why is it that you believed you had been  
6 discriminated against?

7           **A.** Because I was told by Lieutenant Muxo that I  
8 shouldn't bother filling out an application for the  
9 job, because it was going to a black female.

10          **Q.** Did you put Lieutenant Muxo and what he told  
11 you in the grievance?

12          **A.** No, I did not.

13          **Q.** Can you explain to the jury why you didn't put  
14 what Lieutenant Muxo told you in Plaintiff's  
15 Exhibit 13?

16          **A.** When Lieutenant Muxo told me what he had told  
17 me, I believed he was being as truthful and honest with  
18 me as he could be, and I didn't want him to fall under  
19 -- I knew it would -- making this complaint would throw  
20 him under the bus, so to speak. I wanted to minimize  
21 that as much as I possibly could.

22               When somebody is honest with you about  
23 something of this nature, it is very difficult to make  
24 a decision to address it; and like I said, I think  
25 Lieutenant Muxo was being honest and truthful with me.

1 I wanted him to not have to fall under, or fall under  
2 as little scrutiny as possible from the department.

3 **Q.** Any other reason that you didn't put in what  
4 Lieutenant Muxo told you in Exhibit 13?

5 **A.** I wanted to give the police department a  
6 chance to right this, to make it right, didn't want to  
7 embarrass the police department, or let them embarrass  
8 themselves anymore than they already had.

9 **Q.** Did you ultimately set forth what Lieutenant  
10 Muxo told you in any kind of complaint or grievance?

11 **A.** In the EEOC complaint, I did.

12 **Q.** Why did you include it in your EEOC complaint?

13 **A.** Because the department did nothing to address  
14 what had occurred, and I had to take it to the next  
15 level.

16 **Q.** And before I move on in terms of the response  
17 to the grievance, when you had -- when you had not  
18 gotten other jobs before, that had gone to  
19 African-American candidates, did you file any grievance  
20 or EEOC complaint with the department about those  
21 positions?

22 **A.** No, never.

23 **Q.** Did you receive a response to your grievance?

24 **A.** Yes.

25 **Q.** And do you recall when you received the

1 response to your grievance?

2 A. I believe it was six or seven days after I  
3 filed it.

4 Q. And how did you receive a response to your  
5 grievance?

6 A. I was called by a member of the Human  
7 Resources Division and asked to come to the Human  
8 Resources Division for a response.

9 Q. What did she tell you about your grievance?

10 MS. TUCKER: Objection, hearsay, your Honor.

11 THE COURT: Overruled, overruled.

12 THE WITNESS: The Human Resources person told  
13 me that the Chief Isom had responded to my grievance in  
14 an e-mail. She read it to me while I was sitting in  
15 her office, and it said essentially that the Chief Isom  
16 made a transfer based on the fact that Sergeant Angela  
17 Taylor had more time and rank, and that she had a clean  
18 disciplinary background.

19 Q. (By Ms. Petruska) And let me show you -- I  
20 understand you said it was read to you. You didn't see  
21 it that day, but is Exhibit 47, essentially what Ms.  
22 Hicks told you that day in her office?

23 THE CLERK: Judge, that's not in evidence.

24 THE COURT: That's not in evidence, what  
25 Exhibit 47?

1 THE CLERK: 47.

2 MS. PETRUSKA: It is or isn't.

3 THE COURT: It is not. You can show it to  
4 him, if you want to. Is it the same as Defendant's  
5 Exhibit B?

6 MS. PETRUSKA: It is, your Honor.

7 THE COURT: Can 47 be received without  
8 objection. Can Exhibit 47 be received without  
9 objection?

10 MS. TUCKER: Yes, your Honor.

11 THE COURT: So 47 is received. You can show  
12 it again.

13 MS. PETRUSKA: Thank you, your Honor.

14 **Q.** (By Ms. Petruska) Let me direct your  
15 attention again to Exhibit 47, and ask you if that's  
16 essentially what's contained in Exhibit 47 is  
17 essentially what Ms. Hicks told you orally?

18 **A.** Yes.

19 **Q.** And what did you do when Ms. Hicks read you  
20 the Chief's response to the grievance?

21 **A.** I told her that it was inaccurate. That  
22 Sergeant Taylor and I had been promoted on the exact  
23 same day, and that she did not have a clean  
24 disciplinary background.

25 **Q.** Was there anything else that you considered

1       inaccurate about Exhibit 47?

2           **A.** I believe that was it.

3           **Q.** Okay. I'm going to show you what has been  
4 marked as Plaintiff's Exhibit 2. That appears to be a  
5 memo dated March 18, 2009, naming promotions; is that  
6 correct?

7           **A.** Yes.

8           **Q.** Does Exhibit 2 -- I know I'm going to have to  
9 flip to the second page, but does Exhibit 2, show what  
10 you have previously testified to that you, and Sergeant  
11 Taylor, were promoted on the same date?

12          **A.** Yes, it does.

13          **Q.** I started to ask this a minute ago. I want to  
14 get back to it. After the Assistant Director position  
15 was filled, did you have any other conversations with  
16 Lieutenant Muxo about it obviously?

17          **A.** Yes.

18          **Q.** And do you know when that occurred?

19          **A.** I believe it was October 30, 2010.

20          **Q.** And how did that particular conversation come  
21 about?

22          **A.** I was on the scene of a possible barricaded  
23 subject in District 8. Lieutenant Muxo had called my  
24 cellphone. I couldn't get the call, and then there was  
25 some officers on the scene that told me that Lieutenant



1 Muxo was looking for me to speak with me, and I -- we  
2 made occasion to meet up. We had a conversation,  
3 physical conversation.

4 Q. And can you describe to the jury -- let me ask  
5 you first, set the scene for the conversation, were you  
6 in front of other officers, were you by yourself, how  
7 physically did the conversation take place?

8 A. There were several other officers. I believe  
9 it was after the incident had been secured, and he  
10 sought me out, and we spoke briefly, and he asked to  
11 speak with me privately. So we began walking up an  
12 alley, away from the other officers that were at the  
13 location.

14 Q. As far as you could tell, could anybody else  
15 -- as far as you could observe, could anybody else hear  
16 your conversation?

17 A. I don't believe so.

18 Q. And what did Lieutenant Muxo tell you about  
19 the Assistant Director position on October 30, 2010?

20 A. He told me that he had no choice. That he had  
21 to bring color down to the academy.

22 Q. And did he tell you anything else?

23 A. That it was Colonel Harris' decision, and that  
24 I should keep doing what I am doing with the driver's  
25 training. That he would try to create a position for

1 me at the academy.

2 Q. How long did that particular conversation  
3 last?

4 A. Not very long, three, five minutes maybe.

5 Q. As it relates to the academy, not what was  
6 happening at the scene, was there anything else that  
7 was happening on that particular conversation on  
8 October 30th?

9 A. No.

10 Q. Do you still want to be the Assistant Director  
11 of the academy today?

12 A. Absolutely.

13 Q. Could you explain to the jury why that is?

14 MS. TUCKER: Your Honor, I object. That is  
15 asked and answered with regard to why he wants to be  
16 Assistant Academy Director.

17 THE COURT: Overruled.

18 THE WITNESS: It is my dream job on the police  
19 department. I have been involved in training. I  
20 started getting involved in training shortly -- little  
21 over two years after I had graduated the police  
22 academy, previous commanders had recommended me to get  
23 involved in the training, which I graciously accepted.  
24 It is my passion.

25 I believe this police department to be one of

1 the best in the nation, and I would really like to  
2 continue with that, and make it even better than it is  
3 now.

4 I believe I have everything that is necessary  
5 to make police officers the best that they can be, to  
6 help them along their way, and to have the ability to  
7 maybe not have people that are as good as they could  
8 be, that aren't cut out for police work, because in  
9 every facet of this job, in any job, there are people  
10 that shouldn't do the job sometimes. In training is  
11 where you discover who has what it takes and who  
12 doesn't.

13 And I can only go forward in my career. It  
14 would be a good step to enhance my career, if I was  
15 given the opportunity. It is basics of police work  
16 starting in training. That's where you have to insure  
17 that everything -- at least in my opinion -- that  
18 everything is trained properly, and it brings out the  
19 best in everybody that can do the job, to the best  
20 help, everybody they come in contact with.

21 **Q.** And anything else you want to add before I  
22 move on in terms of why you still want to be Assistant  
23 Director today?

24 **A.** No, ma'am.

25 **Q.** Could you explain to the jury how being denied

1 the Assistant Director position has impacted you  
2 personally as it relates to your job?

3 **A.** Being denied the position in and of itself  
4 hasn't impacted me. I was denied for positions before.  
5 It was the reason I was denied, that's because of my  
6 race.

7 **Q.** Let me rephrase the question. How has being  
8 denied the Assistant Director position because of your  
9 race impacted you personally in terms of your  
10 performance of the job?

11 **A.** It is -- especially at first, it has been  
12 devastating. You know, I go to work knowing that no  
13 matter what I do or how good I have done something, or  
14 what I have to do, no matter how well it is done, or  
15 how well it is executed, it is not going to matter.

16 I used to think that the police department  
17 would take care of you, would really acknowledge and  
18 grasp the job that you did well-done, and sometimes  
19 when people stand out, you want those people to move  
20 forward in their career and be the next leaders of the  
21 department. I really thought that's what I was doing,  
22 and where my career was going.

23 And when I was told I couldn't have this job  
24 that I was more than qualified for simply because of  
25 the color of my skin, it just made my lose faith in the

1 way things are done from the top level of this police  
2 department, and it is sickening. It is illegal and  
3 sickening. It really made me second guess my job, and  
4 how to do it.

5 But I can't let that -- I couldn't let that  
6 dictate how I deal with people on the street. The  
7 officers that depend on me. The citizens that depend  
8 on me to do my job. It is very difficult.

9 Q. Is there anything you wanted to explain to the  
10 jury about how this decision has impacted you  
11 professionally before I move on?

12 MS. TUCKER: I object. She asked, and he  
13 answered the question.

14 THE COURT: Overruled.

15 THE WITNESS: Well, professionally, I mean, I  
16 sued the police department. My career is going  
17 nowhere. No matter -- no matter what happens in my  
18 career now, I'm always going to have this label that I  
19 sued the police department for this reason.

20 I mean, if that position came up today, and I  
21 applied for it, I know darn good and well that I  
22 wouldn't be selected for that position.

23 MS. TUCKER: Your Honor, I'm going to ask you  
24 to request -- or request that this last testimony be  
25 stricken from the record, because this is sheer

1 speculation on Sergeant Bonenberger's behalf.

2 THE COURT: It is. I think that's what it was  
3 called for. I'm not going to strike it. Members of  
4 the jury, do you understand this is his opinion about  
5 what he thinks. It is not anything attributable to the  
6 defendants. Go ahead.

7 MS. PETRUSKA: Thank you, your Honor.

8 Q. (By Ms. Petruska) Before I move on how it has  
9 impacted you personally, anything else that you want to  
10 explain to the jury about how it has impacted you  
11 professionally; if not, I'll move on?

12 A. Go ahead and move on.

13 Q. Okay. So could you explain to the jury,  
14 please, how being denied this decision because of your  
15 -- I'm sorry, denied the position of Assistant Director  
16 because of your race has impacted your personal life?

17 A. Yeah, I mean at first, I lost weight. I had  
18 trouble sleeping. I mean, stress on my personal life,  
19 my relationship with my wife and my children. I know  
20 it caused me to be shorter, I guess, that's the term,  
21 quicker to react to things.

22 I could see that my -- I would get angry at  
23 things I wouldn't normally get angry at home. I just  
24 have a harder time dealing with realities, the  
25 obstacles that life offers you, because I knew no

1 matter what happened at work, I have to go out and do  
2 the job. That's the only thing required of me. I have  
3 to do it to the best of my ability. I can't let that  
4 go.

5 But I knew no matter what I did, it didn't  
6 matter. I can change all kinds of things at work or  
7 try to make them change for the better. The only thing  
8 I cannot change is the color of my skin. When you know  
9 that's the reason why you didn't get the chance to  
10 excel on something you love, it made it very difficult  
11 to speak with people at home, and it has been  
12 deflating.

13 **Q.** Anything else again in terms of your personal  
14 life, how this decision has impacted you that you want  
15 to explain to the jury?

16 **A.** Don't get me wrong, having to do this has been  
17 agonizing just to go through it and get it to this  
18 level, because I knew that it was just -- it took the  
19 highest level that can evolve. That's never going to  
20 be good for you personally in your career, if you have  
21 to go this way.

22 What happened to me was wrong. It was  
23 illegal. It cannot be allowed to occur, and it must be  
24 stopped. I don't want anybody else to have to go  
25 through this. It has been just horrible, devastating.

1 I know I'm not going to get anywhere else in this  
2 career. Thank God, I'm close to 20 years. I don't  
3 have anything else to say.

4 MS. PETRUSKA: Judge, if I may confer for one  
5 moment, please.

6 THE COURT: You may.

7 MS. PETRUSKA: Thank you.

8 **Q.** (By Ms. Petruska) Sergeant Bonenberger, I  
9 know you have referenced this briefly that it had an  
10 impact on your family. Could you go into a little bit  
11 more detail about how the department's decision has  
12 impacted -- I think you said your wife and children,  
13 how has it impacted your relationship with your wife  
14 and children?

15 **A.** Well, since this has occurred, it becomes a  
16 part of every conversation. I don't know why. It just  
17 does. It has caused me to be, I guess, a little bit  
18 more distant at times when I start thinking about it,  
19 and my son, one of my sons is 20. My other son is five  
20 now, interacting with them at times it becomes more  
21 difficult when this is on my mind. I have to separate  
22 from them, and it is very very difficult.

23 My wife and I seem to argue quite a bit more.  
24 I think that's -- I mean, I used to think that I was  
25 the kind of guy that would -- things would roll off of,



1 if you know what I mean, where adverse things just roll  
2 off you.

3 This isn't something that you can just accept  
4 and move on. It has just caused more difficulty with  
5 dealing with my family.

6 **Q.** Is your wife also a police officer?

7 **A.** Yes, she is.

8 **Q.** What department is she with?

9 **A.** She works for the St. Louis Police Department.

10 **Q.** And has the fact that you are both on the same  
11 department have any impact on how this has impacted  
12 your family?

13 **A.** Absolutely, you know, I wasn't so much  
14 concerned about what would happen to me, because I knew  
15 it was me at the forefront, and I expected retaliation.  
16 I expected to be black-balled.

17 It is not fair to my wife. She is a police  
18 officer. She is darn good at her job. She works very  
19 hard at it and takes a lot of pride at what she does.

20 MS. TUCKER: I would like to object to this.

21 THE COURT: Can you approach the bench.

22 (Proceedings were held at sidebar, outside the  
23 hearing of the jury.)

24 MS. TUCKER: Your Honor, he is now getting  
25 into the issue of how his wife feels, all that is

1 speculation. He doesn't know for -- he doesn't know  
2 that for a fact. I think I have tried to be to just  
3 not object, but now it seems like it is going on and  
4 on.

5 THE COURT: It sounded like to me we were  
6 headed in a loss of consortium.

7 MS. TUCKER: Or rehabilitation.

8 THE COURT: Only one can talk at once. What's  
9 he going to say next.

10 MS. PETRUSKA: That's not what I was trying to  
11 get into.

12 THE COURT: What is he going to say next?

13 MS. PETRUSKA: I thought he was going to say  
14 it caused additional stress for the family, because  
15 they were with the same department.

16 THE COURT: You will agree you will stop  
17 asking these questions, move onto something else. The  
18 objection is sustained.

19 (Proceedings resumed in open court.)

20 **Q.** (By Ms. Petruska) Sergeant Bonenberger, I'm  
21 not asking you to speculate on how this has impacted  
22 your wife's career. What I'm asking you is has the  
23 fact that your wife works for the -- can you describe  
24 for the jury what the stress looks like, or what the  
25 stress is like, because you guys both work for the same

1 department?

2 MS. TUCKER: Once again, I'm going to object  
3 to relevancy.

4 THE COURT: Sustained.

5 MS. PETRUSKA: Then I have no further  
6 questions.

7 THE COURT: You may cross-examine.

8 MS. TUCKER: Before we do that, could we  
9 approach.

10 THE COURT: You may.

11 (Proceedings were held at sidebar, outside the  
12 hearing of the jury.)

13 MS. TUCKER: Your Honor, do you recall our  
14 pretrial conference in one of the motions in limine,  
15 plaintiff's motion in limine was that the evidence  
16 regarding Mr. Bonenberger and why he didn't refile his  
17 grievance when it wasn't appropriately filed.

18 She asked that be kept out of the motion in  
19 limine, and you granted that if it became an issue for  
20 me, to approach the bench. In this particular  
21 situation, I think the issue has come in that counsel  
22 asked Sergeant Bonenberger why he did what he did. He  
23 basically said -- he wanted to minimize. He wanted to  
24 give the department an opportunity to right the wrong,  
25 but he didn't do that, because they asked him to refile

1 the grievance appropriate. He didn't do that. He went  
2 straight to the EEOC.

3 Now I think it is an issue, because it is like  
4 the department totally ignored what his issue was when  
5 race wasn't even part of the equation initially.

6 THE COURT: What's your evidence about the  
7 grievance. What would you be presenting if I allowed  
8 you to go into this.

9 MS. TUCKER: When he filed a grievance, he was  
10 instructed that the type he needed to grieve the  
11 application process, not the fact that the Chief made  
12 the transfer, because the chief can make the transfer  
13 based on policies and procedure. His issue was with  
14 the process.

15 The fact I didn't receive an interview, which  
16 is what his grievance specifically said. They told him  
17 to refile it and do it right.

18 THE COURT: I don't understand what was wrong  
19 with it. You said -- what did he file. What did they  
20 tell him to do. What was wrong with what he did?

21 MS. TUCKER: Well, he didn't file -- he didn't  
22 file an appropriate grievance.

23 THE COURT: I was trying to understand what  
24 was inappropriate. You said he had to grieve the  
25 application and this grievance. I'm trying to -- why

1 did they tell him to go back and file an appropriate  
2 grievance because --

3 MS. TUCKER: Because your issue isn't with the  
4 Chief of Police. Your issue is the fact you didn't  
5 have an interview.

6 THE COURT: Who he named as the respondent  
7 person, are you still objecting to that?

8 MS. PETRUSKA: I would, your Honor, the reason  
9 would be for the same reasons I said in the limine  
10 motion. I disagree with that. You are going to have  
11 this collateral dispute about whether he was told or  
12 wasn't told.

13 He didn't file the grievance right. He is  
14 going to confuse the issue in the case. It is going to  
15 take a lot of time, when it is not a central issue in  
16 the case. They have evidence they are going to say  
17 they said that he is going to say he granted to grieve  
18 it; and you know, he was told he couldn't go to the  
19 next step. It is a collateral issue.

20 THE COURT: I'm going to sustain the  
21 objection, and instruct you, as I did in the motion in  
22 limine, I don't believe this has opened the door.  
23 Let's not get into the how the grievance was filed in  
24 this whole issue.

25 (Proceedings resumed in open court.)

CROSS-EXAMINATION

BY MS. TUCKER:

**Q.** Good afternoon, Sergeant Bonenberger?

**A.** Good afternoon.

**Q.** I think you testified earlier that you had been on the police department. You have been with the St. Louis Metropolitan Police Department for 19 plus, almost 20 years; is that correct?

**A.** Yes, ma'am.

**Q.** And also just so I can make sure I'm understanding what you are saying, it is your testimony that Lieutenant Muxo told you that Lieutenant Colonel -- Lieutenant Colonel Harris told you that they wanted an African-American for the position for Assistant Academy position; is that correct?

**A.** You--

THE COURT: Could you rephrase the question or restate it. I'm not sure I caught it all.

**Q.** (By Ms. Tucker) Is it your testimony that Lieutenant Muxo told you that Lieutenant Colonel Harris said that they wanted an African-American for the position for Assistant Academy director?

**A.** Lieutenant Muxo told me that the position was going to a black female, and he had no control over it. It was Lieutenant Colonel Harris' decision.

1           **Q.** Did he tell you where Lieutenant Harris got  
2 that information from?

3           **A.** No, ma'am.

4           **Q.** So what is your position with regard to where  
5 Lieutenant Colonel Harris got that information from?

6           **A.** I have no idea.

7           **Q.** Now, you have been a Sergeant for 19 plus  
8 years, and as a sergeant --

9           THE COURT: Counsel, I don't think he  
10 testified to -- I think he said he had been with the  
11 department for 19 plus years.

12           MS. TUCKER: You are right.

13           **Q.** (By Ms. Tucker) You have been with the  
14 department for 19 plus years. You have been a Sergeant  
15 for how long?

16           **A.** Since March 18, 2009.

17           **Q.** Since 2009, but at the time of the situation,  
18 you had been a Sergeant for approximately a year?

19           **A.** It was about a year and a half.

20           **Q.** Okay so a year and a half, and during that  
21 year and a half, I think you testified that as a  
22 Sergeant, you had supervisory responsibilities,  
23 correct?

24           **A.** Correct.

25           **Q.** To the people that you supervised?

1           **A.** Yes, in the district.

2           **Q.** You had to make sure that they comply with  
3 policies and procedures, and special orders, and things  
4 of that nature?

5           **A.** Yes, ma'am.

6           **Q.** And as a police officer for 20 years, as a  
7 Sergeant for a year and a half at that time, you knew  
8 that it was wrong to give one person a job over another  
9 simply because of the color of their skin. You knew  
10 that was wrong, correct?

11          **A.** Yes, I knew it was illegal.

12          **Q.** And who did you report that to when that  
13 happened?

14          **A.** I reported it to the Human Resources Division  
15 and the EEOC.

16          **Q.** That was after the fact. So when Muxo made  
17 that comment to you, who did you report that to, prior  
18 to applying for the job?

19          **A.** I didn't report it to anybody prior to  
20 applying for the job.

21          **Q.** When you applied -- let's move onto the  
22 application process. When you applied for the  
23 position, you knew that the position required three  
24 years supervisory experience, correct?

25          **A.** Yes, ma'am.



1           **Q.** And you knew that you did not have three years  
2 of supervisory experience, correct, as a Sergeant?

3           **A.** I believed that I had met that threshold as an  
4 acting Sergeant, not officially as the rank of  
5 Sergeant, but combined, I believed I did.

6           **Q.** The minimum requirements for the job, Sergeant  
7 Muxo, were for three years as a Sergeant, not acting as  
8 a Sergeant; is that correct?

9           **A.** You addressed me Sergeant Muxo.

10          **Q.** I'm sorry, Sergeant Bonenberger?

11          **A.** It said the minimum qualifications were three  
12 years supervisory experience, I believe.

13          **Q.** And you did not have three years as an acting  
14 Sergeant, as a Sergeant, as the rank of Sergeant; is  
15 that correct?

16          **A.** That's correct.

17          **Q.** You also testified earlier that you felt you  
18 were qualified for this position, because you had an  
19 instructor's license; is that correct?

20          **A.** That's one of the reasons.

21          **Q.** Right, just one of the reasons, but in having  
22 an instructor's license was not a minimum qualification  
23 for this job; is that correct?

24          **A.** I don't believe it was.

25          **Q.** Let me show you again what has been marked as

1 Plaintiff's Exhibit 1, minimal requirements in  
2 training; do you see where I'm talking about, Sergeant?

3 **A.** Yes, ma'am, I do.

4 **Q.** That doesn't say anything about having to have  
5 an instructor's license, does it, under the minimum  
6 requirements in training?

7 **A.** No, it doesn't.

8 **Q.** It doesn't say anything about being a field  
9 training officer, does it?

10 **A.** No, it does not.

11 **Q.** Once again, that was one of the qualifications  
12 that you had, that in your mind, made you more  
13 qualified for this position than Sergeant Taylor,  
14 correct?

15 **A.** Absolutely.

16 **Q.** It doesn't say anything about being a fire  
17 arms instructor, does it, Sergeant?

18 **A.** No.

19 **Q.** Once again, that's a qualification that you  
20 had in your mind that you thought made you more  
21 qualified than Sergeant Taylor; is that correct?

22 **A.** Yeah, when you consider somebody for the  
23 position, obviously, you would want people that have  
24 the most appropriate qualifications for a position.

25 **Q.** I understand that, Sergeant, but I just need

1 you to answer yes or no, being a firearms instructor  
2 was not a minimum qualification for this particular  
3 position, am I correct?

4 **A.** Yes, you are correct.

5 **Q.** Also Sergeant, you testified earlier that in  
6 your mind, this would have been a promotion for you; is  
7 that correct?

8 **A.** Yes.

9 **Q.** Okay. But the Assistant Academy Director  
10 position, that did not come with a pay increase; is  
11 that correct?

12 **A.** That is correct.

13 **Q.** It didn't come with any additional benefits;  
14 is that correct?

15 **A.** Well, that's debatable.

16 **Q.** What additional benefits did it come with?

17 **A.** When I was at the academy as an instructor,  
18 the Assistant Director had a take home car and--

19 **Q.** Okay, so with this particular position on the  
20 time that you applied for it, do you know -- were you  
21 going to get a take home car, do you know?

22 **A.** I believe so, but I'm not sure.

23 **Q.** You don't know that for sure?

24 **A.** Right.

25 **Q.** You are speculating about that?

1           **A.** That's the way the past practice was, so I  
2 just assumed that it was part of it. There is also the  
3 benefit of having holidays and weekends off, because it  
4 is predominately a Monday through Friday daytime hour  
5 job that's beneficial.

6           **Q.** Okay, but you could also get the same  
7 weekends, holidays off, if you have other positions --  
8 if you are in other positions too. That wasn't  
9 something that was specifically related to this  
10 position; is that correct?

11           **A.** I really don't know of any other jobs on the  
12 police department besides instructors that have Monday  
13 through Friday, weekends off jobs other than aides to  
14 commanders.

15           **Q.** That's why you think this job was a promotion?

16           **A.** No. I think it was a promotion based on what  
17 I testified to earlier with all of the added  
18 responsibilities on your direct line of operating the  
19 academy.

20           **Q.** Let's just clean this up. You weren't going  
21 -- this Assistant Academy Director position did not  
22 come with a pay increase; is that correct?

23           **A.** That's correct.

24           **Q.** Thank you.

25           **A.** You are welcome.

1           **Q.** And the department does not necessarily  
2 consider this a promotion. In the books, you are not  
3 considered promoted; is that correct?

4           **A.** No. It is not another rank.

5           **Q.** In going back to the qualifications of the  
6 minimum requirements for training, you testified  
7 earlier with regard to all of the teaching -- I'm  
8 sorry, you testified earlier with regard to the fact  
9 that you had written areas, I guess brochures, things  
10 like that, for the police academy, that was not a  
11 requirement for this position, authoring any type of  
12 training materials was not a minimum requirement for  
13 this position, was it?

14          **A.** Part of the knowledge of police officer's  
15 standards and testing, continuing education training  
16 requirements would be.

17          **Q.** To you, that means writing -- that's writing  
18 manuals. This does not say that part of the  
19 requirements is that you author any manual for the  
20 academy; is that correct, Sergeant?

21          **A.** That's correct, but part of knowledge of the  
22 police officer's standards and testing is included in  
23 that knowledge would be knowing what is to be contained  
24 in post-approval lesson plans and instructions from the  
25 police academies in the State of Missouri.

1           **Q.** This particular position in the minimum  
2 requirements in training doesn't require you to have  
3 any type of specific awards and commendations. It  
4 doesn't list that here, does it, Sergeant?

5           **A.** Awards and commendations, no, ma'am.

6           **Q.** Okay. Now you testified earlier also that  
7 when this position became available, you actually  
8 called Lieutenant Muxo to inquire about the position,  
9 correct?

10          **A.** Yes, I did.

11          **Q.** And Lieutenant Muxo told you that they already  
12 had somebody in mind for the position?

13          **A.** Yes.

14          **Q.** Okay. So that in and of itself, that's not  
15 something that was unusual, is it, that a Commander  
16 would have somebody in mind possibly for a position  
17 that they may want them to fill?

18               MS. PETRUSKA: I object, to the extent it  
19 calls for speculation from the witness, if he knows.

20               THE COURT: Do you know?

21               THE WITNESS: I have no knowledge on who would  
22 -- I have never been a Commander, so I have never made  
23 that decision.

24               THE COURT: So sustained.

25          **Q.** (By Ms. Tucker) Has any commander ever

1 approached you and asked you if you were interested in  
2 a particular position?

3 **A.** Once for a detachment, I believe.

4 **Q.** Okay.

5 **A.** Then of course, if you consider field training  
6 officer a position, my Commander at the time, wanted me  
7 to be a field training officer in '97. That's not a  
8 difference. It is additional responsibilities. I  
9 don't know if that qualifies with your question.

10 **Q.** Let's move to your grievance, Sergeant. As  
11 Plaintiff's Exhibit 13, in your grievance, it states:  
12 "I was not granted an interview for the position of  
13 Sergeant Assistant Academy Director after properly  
14 submitting the application as outlined in special  
15 order;" is that correct?

16 **A.** That is correct.

17 **Q.** Tell me where in this, my grievance is, tell  
18 me where in that section you make reference of being  
19 discriminated against in that section?

20 **A.** In that section there doesn't appear to be any  
21 reference.

22 **Q.** Tell me in that section where you made  
23 reference to the fact that Lieutenant Muxo told you  
24 that position was already going to an African-American  
25 female. Where does it say that in that -- specifically

1 say that in that section?

2 **A.** I didn't say that in that section.

3 **Q.** Although you do reference the EEOC in the  
4 section under a fair solution to my grievance. Once  
5 again, you make no reference to being discriminated  
6 against or being told that the position was going to an  
7 African-American; is that correct? I understand the  
8 EEOC language.

9 What I'm asking you specifically do you state  
10 anything in there about being told this position was  
11 going to an African-American or race discrimination?

12 **A.** No, it is not specifically included in there.

13 **Q.** You could have written that in where it says  
14 my grievance is. You could have written that there,  
15 correct. There is no reason you could not have written  
16 that there?

17 **A.** Well, I could have written anything in there.

18 **Q.** You could have written anything there that you  
19 wanted to, correct?

20 **A.** Yes.

21 **Q.** Same with regard to a fair solution to my  
22 grievance. Once again, that is strictly up to you.  
23 You can write anything in there you want to write in  
24 there, correct?

25 **A.** Yes.



1           **Q.** You also testified earlier that after filing  
2 this grievance -- strike that -- if I recall your  
3 testimony correctly, you indicated that you did not  
4 want to throw Lieutenant Muxo under the bus; is that  
5 correct?

6           **A.** Yeah, I don't know if that's the proper words,  
7 but that's the best I could come up with.

8           **Q.** That would have been with regard to naming him  
9 in the -- or making allegations of discrimination that  
10 he told you in your grievance; is that correct?

11           **A.** Are you asking if that's the reason why I  
12 didn't name him directly in the grievance?

13           **Q.** According to you, you said you didn't want to  
14 throw him under the bus. That's why you didn't name  
15 him?

16           **A.** That's correct.

17           **Q.** And you wanted to minimize the issue?

18           **A.** No, I wanted to minimize any potential for  
19 damages, collateral damage, that Lieutenant Muxo might  
20 receive.

21           **Q.** So then that's when you filed the EEOC charge,  
22 after filing the grievance where you wanted to minimize  
23 anything, any issue; is that correct?

24           **A.** It was after I filed the grievance, yes,  
25 ma'am.

1           **Q.** You also testified earlier that you filed the  
2 grievance like this, because you wanted to give the  
3 department an opportunity to address the issue; is that  
4 correct?

5           **A.** Yes, I wanted to give them an opportunity to  
6 address what had been done.

7           **Q.** How could they address the issue, if you don't  
8 tell them what the issue is?

9           **A.** I think with mentioning that I wanted an  
10 interview with the member of the EEOC present, they  
11 would be able to see what the issue was.

12           **Q.** You expected that they would speculate and  
13 figure that out?

14           **A.** In a way, yes, I did.

15           **Q.** Sergeant, you take issue with the fact that  
16 Sergeant Taylor was transferred into this position, as  
17 opposed to you, and she did not meet the minimum  
18 qualifications, is that correct?

19           **A.** No, I don't take issue with that at all.

20           **Q.** But it is your testimony that she did not meet  
21 the minimum qualifications; is that correct?

22           **A.** Yes, that's correct.

23           **Q.** No, did you?

24           **A.** Yes, that's correct.

25           **Q.** Sergeant, are you currently the President of

1 the Police Officers Association?

2 **A.** Yes, I am.

3 **Q.** And you became President after this incident  
4 occurred?

5 **A.** Yes.

6 **Q.** And in that position, you have routine  
7 meetings with the Chief of Police; is that correct?

8 **A.** I wouldn't say routine meetings. That's too  
9 subjective to identify.

10 **Q.** How often do you meet with the Chief of  
11 Police?

12 **A.** When Chief Isom was the Chief, I would say I  
13 met with him every other week, once a month, or  
14 whenever meetings were called by the Chief or by the  
15 Union to address issues between management and labor.

16 Since Chief Dotson has been in office,  
17 initially I would meet with or speak with him probably  
18 on a weekly basis, but over the last few months,  
19 probably once a month, that's probably the best  
20 timeframe I can give you as far as meeting with the  
21 Chief goes.

22 **Q.** You have a good working relationship with  
23 Chief Dotson?

24 **A.** I would say that it is a good relationship. I  
25 had a real good working relationship with Chief Isom

1 as well, at least in my opinion.

2 **Q.** As President of the Police Officers  
3 Association, you also have interaction with the Board  
4 of Police Commissioners?

5 **A.** I have had to have, I believe, at least three  
6 meetings with Richard Gray, who is the President of the  
7 Board of Police Commissioners, and it was over issues  
8 -- issues with the police department.

9 **Q.** As the President of the Police Officers  
10 Association, what are your responsibilities?

11 **A.** Well, I'm the CEO of the Police Association.  
12 I'm responsible for the budget with the association.  
13 It is well over a million dollars. Responsible for all  
14 of the administrative aspects associated with an  
15 organized labor union, including being basically  
16 responsible for all of the employees, as well as over  
17 1,000 members of the police department that are members  
18 of the union, having to deal with any issues that may  
19 come to light surrounding labor and management.

20 **Q.** You have done this successfully?

21 **A.** I believe I have been very successful.

22 **Q.** Being the President of the Police Officers  
23 Association, I would -- would you describe that as an  
24 important role?

25 **A.** Well, I would say it is important to those who

1       elected me in the position, but it is not very  
2       important to the management of the police department.

3           **Q.** But you have people that rely on you as  
4       President of the Police Officers Association; is that  
5       correct?

6           **A.** I would say that's a fair statement, yes,  
7       ma'am. I would like to go back and re answer the  
8       question. I wasn't clear on your question about when I  
9       became President of the Association.

10          **Q.** Uh-huh?

11          **A.** I believe I answered that yes, that I became a  
12       president after this incident. But I'd like you to  
13       know that this happened in the beginning was  
14       September 2010, and I ran for President of the  
15       Association in the summer months, early fall of 2011.  
16       Then I took office when I was elected on November 1st.

17          **Q.** Okay?

18          **A.** I don't know if that helps clarify.

19          **Q.** You ran for the position, and you took office  
20       after this incident?

21          **A.** Yes, ma'am.

22          **Q.** And that's not a position -- this is a  
23       position that I would imagine you take very seriously?

24          **A.** Yes, ma'am.

25          **Q.** You would not have run for this position had

1     you not thought you were qualified for this position;  
2     is that correct?

3           **A.**   The position of the President?

4           **Q.**   Yes, sir.

5           **A.**   Yeah, I run for that. I don't know if there  
6     is a qualification.

7           **Q.**   Sergeant Bonenberger, is it your testimony --  
8     I just want to confirm your testimony, is the fact that  
9     there were, in fact, three applicants for the position;  
10    is that correct, as far as you know?

11          **A.**   For what?

12          **Q.**   For the Assistant Academy Director position?

13          **A.**   As far as I know, yes.

14          **Q.**   As far as you know, I know you know that you  
15    did not, from the three years as a Sergeant, and  
16    Sergeant Taylor didn't have the three years as a  
17    Sergeant, what about the third applicant?

18          **A.**   Sergeant Buckeridge.

19          **Q.**   Right?

20          **A.**   Was promoted after myself and Sergeant Taylor,  
21    so he didn't possess the three-year requirement either.

22          **Q.**   I am also showing you, Sergeant, what has been  
23    marked as Plaintiff's Exhibit 8. That's your  
24    performance appraisal?

25          **A.**   Yes, ma'am.

1           **Q.** Was this a part of the application that you  
2 had to turn in when you applied for the Assistant  
3 Academy Director position?

4           **A.** I don't know if I turned them in with the  
5 application or not.

6           **Q.** You don't know whether this was actually  
7 attached to your application when you turned it in for  
8 the position; is that correct?

9           **A.** I don't remember. I don't know, but I can  
10 only assume that those would be making the decision  
11 would look into your past performance. I don't know.  
12 I might have turned it in with it. I don't remember.

13           **Q.** Right, but I understand what your assumptions  
14 are, but you don't know that for a fact either,  
15 correct?

16           **A.** Which part?

17           **Q.** That this was reviewed when the commission  
18 interview sheet -- the application was submitted?

19           **A.** No, I don't know.

20           **Q.** Sergeant Bonenberger, I think we have made it  
21 clear that none of the three applicants had the three  
22 years of Sergeant experience when you all applied for  
23 the Assistant Academy Director position -- strike that.  
24 Back to Plaintiff's Exhibit 3, Sergeant, that is your  
25 commissioned interview sheet?

1           **A.**    Yes.

2           **Q.**    If you turn to page -- the third page of that  
3           commission interview sheet, all the way down from the  
4           bottom. Actually, if you would start on the next page,  
5           I think.

6                    Yes, Sergeant, I'm sorry, if you would start  
7           on the next page on the bottom number 3089, do you see  
8           where I'm talking about. We are going to start at the  
9           first column?

10          **A.**    Yes, ma'am.

11          **Q.**    Okay. We are going to talk about your history  
12          with the police department. That hasn't been addressed  
13          yet in your direct testimony.

14                   Sergeant, since you have been with the St.  
15          Louis Metropolitan Police Department, have you been  
16          reprimanded at all?

17          **A.**    Yes.

18          **Q.**    And it is -- I'm going to go through those now  
19          with you. I just want to make -- I want you to tell me  
20          whether you agree with me or not?

21          **A.**    Okay.

22          **Q.**    In 1994, you received a written reprimand?

23                   THE COURT: Excuse me, does this have anything  
24          to do with the exhibit you are showing the jury.

25                   MS. TUCKER: Yes, your Honor, it is all listed



1       there in the section.

2           **Q.** (By Ms. Tucker) In 1994, you had a written  
3       reprimand for a chargeable car accident?

4           THE COURT: Where is it on the document. I  
5       don't see anything here.

6           MS. PETRUSKA: Thank you, your Honor.

7           THE COURT: If you would point where you are  
8       talking about.

9           MS. TUCKER: Actually it goes into '95.

10          THE COURT: Okay. The document says return to  
11       duty. Is that what you are talking about, or I don't  
12       know. I can't -- I just, if it is what you are asking  
13       him about, that's fine. If you will just point it out.  
14       It is hard when you have the document up and everybody  
15       thinks we are supposed to look at the document. You  
16       are talking about something else.

17                If you want to just point it out and ask the  
18       question. That will be fine. Go ahead. You can put  
19       it back on. Make sure we know what you are talking  
20       about.

21          THE COURT: We are still on Exhibit 3, right.

22          MS. TUCKER: Yes. Actually, your Honor, I'm  
23       going to take the exhibit down. I'll show you  
24       Defendant's Exhibit J.

25          THE COURT: Hold on a second. Is that one

1 already in evidence. Yeah, it is, it is the agreed  
2 one. You can show J.

3 MS. TUCKER: The first page of Exhibit A.

4 THE COURT: J.

5 MS. TUCKER: J, I'm sorry.

6 **Q.** (By Ms. Tucker) Sir, is that a chargeable  
7 offense for a vehicle accident?

8 **A.** Yes, I believe so.

9 **Q.** That occurred back in April of '94?

10 **A.** Yes.

11 **Q.** You received a written reprimand for that?

12 **A.** Yes.

13 **Q.** Then the next page is -- once again, you  
14 received disciplinary action for another vehicle  
15 accident; is that correct, this was your second  
16 chargeable accident?

17 **A.** Yes.

18 **Q.** What type of reprimand did you receive as a  
19 result of that?

20 **A.** That was a one day suspension.

21 **Q.** Okay. Then here, Sergeant, it looks like you  
22 have another chargeable offense that you received a  
23 written reprimand for. That was another auto accident;  
24 is that correct?

25 **A.** Yes.

1           **Q.** Then here, Sergeant, it looks like you were  
2 suspended for six day disciplinary leave without pay,  
3 what was that about, Sergeant?

4           **A.** That was involving an off-duty incident with  
5 an off-duty officer.

6           **Q.** It was off-duty, but you were suspended for it  
7 -- from work though?

8           **A.** Yes.

9           **Q.** For six days without pay?

10          **A.** Yes, ma'am.

11          **Q.** You have another violation here, where it  
12 looks like you may have received one day suspension?

13          **A.** Yeah, that was one that I --

14          **Q.** You failed to appear in court?

15          **A.** I forgot about court, yes, ma'am.

16          **Q.** Then you have another violation of Rule 9  
17 here, and this was a two-day suspension?

18          **A.** That one I never accepted the punishment on.  
19 I was suspended for it anyway. I never accepted the  
20 punishment on.

21          **Q.** This was discharging a firearm from a moving  
22 vehicle?

23          **A.** That guy tried to kill me, and I shot at him.  
24 It violated policy.

25          **Q.** You were charged for it?

1           **A.** I never accepted it. I was suspended and lost  
2 the two days pay as well.

3           **Q.** Let me go over my notes real quickly,  
4 Sergeant. Sergeant, you testified that you wanted this  
5 Assistant Academy Director position, because it would  
6 allow for you to have exposure and possibly be promoted  
7 to Lieutenant; is that correct?

8           **A.** Well, no it would give me --

9           MS. PETRUSKA: I object. I do believe it  
10 mischaracterizes previous testimony.

11           THE COURT: Overruled. He can explain what he  
12 said. You can answer.

13           THE WITNESS: No, it has the potential to help  
14 advance your career.

15           **Q.** (By Ms. Tucker) And advancement in your  
16 career would be you going from Sergeant to Lieutenant;  
17 is that correct?

18           **A.** That would be one way. Another way would be  
19 going to another assignment that I consider to be a  
20 promotion as well.

21           **Q.** And in order to be promoted from Sergeant to  
22 Lieutenant, it is not your testimony that all you have  
23 to do is have the correct high-profile job. That's not  
24 your testimony, is it?

25           **A.** That's the only reason to be promoted. Is

1       that what you are asking?

2           **Q.**   That's the basis for -- the foundation of  
3       being promoted is having a high-visibility job?

4           **A.**   I would certainly hope not.

5           **Q.**   There are other aspects that you have to  
6       comply with in order to be promoted; is that correct?

7           **A.**   Yes.

8           **Q.**   And taking a test is one of those?

9           **A.**   Yes.   There is a written test, if that's what  
10      you are asking.

11          **Q.**   When you take those tests, how is that test--  
12      how are the results coming down as a result of the  
13      test?

14           MS. PETRUSKA:   Judge, can I object at this  
15      point and approach.

16           THE COURT:   You may approach the bench.

17           (Proceedings were held at sidebar, outside the  
18      hearing of the jury and an off-the-record discussion  
19      was had.)

20           THE COURT:   That's okay.   We will take a short  
21      break, for the jury, a second recess, while we discuss  
22      this.   So the jury is excused for ten minutes.

23           (At 4:00 p.m., the Proceedings stood in  
24      temporary recess.)

25           THE COURT:   You can go to the lectern.   Hold

1 on a second. I'm looking for my notes from the final  
2 pretrial.

3 Yeah, so the plaintiff filed a motion in  
4 limine, and I agreed that the results of the 2012  
5 Lieutenant's test should not be received into evidence,  
6 but the defendant could approach the bench, if he was  
7 going to ask about those, if she was.

8 MS. TUCKER: Right. I was not going to ask  
9 about the results of the 2012 Lieutenant's exam. I was  
10 trying to elicit testimony with regard to that. There  
11 is a procedure that you have to go through in order to  
12 be promoted to Lieutenant. It is not just being in a  
13 high-profile or high-visibility position.

14 THE COURT: Your question was: "When you take  
15 those tests, how are the results coming down as a  
16 result of the test." That's the question, and your  
17 objection was to that question, I mean.

18 MS. PETRUSKA: That's why I asked to approach,  
19 because I thought -- I thought we were getting into the  
20 motions in limine at this point. We were getting into  
21 the whole issue of Sergeant Bonenberger not really  
22 being eligible for promotion, which I thought was a  
23 limiting issue. That's where I thought we were  
24 heading.

25 MS. TUCKER: No, that's not.

1 THE COURT: Why are you asking this question.  
2 Why does it matter how the results come down.

3 MS. TUCKER: Because I wanted him to explain  
4 that they have clusters A, B, and C. That they are  
5 promoted out of clusters. I wasn't going to ask him  
6 whether he had taken the exam, and what cluster he fell  
7 in.

8 THE COURT: Why are the clusters, and how they  
9 were promoted out of the clusters, relevant to this  
10 case?

11 MS. TUCKER: Because I want the jury to  
12 understand being in a high-profile position isn't the  
13 only way you get promoted.

14 THE COURT: He has already admitted that.  
15 I'll sustain the objection. We will be in recess for  
16 six minutes.

17 (At 4:14 p.m., the Proceedings resumed in open  
18 court.)

19 THE COURT: You may continue with your  
20 cross-examination.

21 Q. (By Ms. Tucker) Sergeant, I just have a few  
22 more questions for you. Prior to the Assistant Academy  
23 Director position opening up, you were a Sergeant; is  
24 that correct?

25 A. Yes.

1           **Q.**    Okay.    And the position of the Assistant  
2 Academy Director, that's also a Sergeant position; is  
3 that correct?

4           **A.**    Yes.

5           **Q.**    Your relationship with Lieutenant Muxo, you  
6 would describe it as a professional relationship; is  
7 that correct?

8           **A.**    Yes, I would.

9           **Q.**    You guys didn't have a relationship outside of  
10 work, like you hung out, or anything like that?

11          **A.**    That is correct.

12          **Q.**    Now, I'd like to talk about your damages that  
13 you testified to that you sustained as a result of not  
14 being transferred into the Assistant Academy Director  
15 position.    You guys haven't taken any time off  
16 specifically for any sick leave since 2010, since this  
17 position became available, you have not taken off any  
18 sick leave; is that correct?

19          **A.**    That is correct.

20          **Q.**    And you haven't sought any medical treatment,  
21 whether it be psychologist, psychiatrist, any type of  
22 therapy, or anything like that as a result of this  
23 incident; is that correct?

24          **A.**    That's correct.

25          **Q.**    Once again, we established that you didn't



1 lose any pay; is that correct?

2 **A.** That's correct.

3 **Q.** You didn't receive any type of demotion, like  
4 you are still a Sergeant; is that correct?

5 **A.** Yes, that's correct.

6 **Q.** Then you also stated that as far as your  
7 personal life, you lost weight, you had trouble  
8 sleeping. Once again, you didn't seek any professional  
9 help as a result of that?

10 **A.** That's correct.

11 **Q.** You didn't go to a doctor, or psychologist, or  
12 psychiatrist, or anything of that nature; is that  
13 correct?

14 **A.** That's correct.

15 MS. TUCKER: I don't have anything further.  
16 Thank you, Sergeant.

17 THE COURT: Redirect?

18 MS. PETRUSKA: Thank you, your Honor.

19 **REDIRECT EXAMINATION**

20 BY MS. PETRUSKA:

21 **Q.** Sergeant Bonenberger, first I want to ask you  
22 about the discipline you described, Exhibit J. All of  
23 that happened before you were assigned to the academy  
24 as an instructor; is that correct?

25 **A.** Yes.

1           **Q.** And in terms of some of the driving issues,  
2 you were reprimanded for accidents, that all happened,  
3 and the department has kept you as a driving training  
4 instructor; is that correct?

5           **A.** Yes, ma'am.

6           **Q.** You were asked some questions about the  
7 minimal requirements for the Assistant Director  
8 Position as set forth in Exhibit 1; do you recall that?

9           **A.** Yes, I do.

10          **Q.** Let me ask you this, one of the other minimal  
11 requirements is two years experience as an academy  
12 instructor, or two years prior classroom teaching  
13 experience; is that correct?

14          **A.** Yes, ma'am.

15          **Q.** Did you have that minimal qualification?

16          **A.** Yes, ma'am.

17          **Q.** To your knowledge, did Sergeant Taylor have  
18 that minimal qualification?

19          **A.** To my knowledge, no.

20          **Q.** Then you see here at the bottom of the page,  
21 it talks about desired qualifications and training. I  
22 have to flip the page again, so give me a second, and  
23 one of the desired qualifications and training is the  
24 Instructor Development School course; do you see that?

25          **A.** I do.

1           **Q.** Is that your post-certification?

2           **A.** It is. You have to successfully complete the  
3 Instructor Development Course before you can become a  
4 post-certified instructor in the State of Missouri.  
5 That's how you get the certification.

6           **Q.** That was at least -- it wasn't a mandatory  
7 requirement, but it was a desired qualification for the  
8 job?

9           **A.** Yes, it was.

10          **Q.** We have probably beat this dead horse, but I  
11 wanted to be clear. In terms of the grievance, in your  
12 mind, did you believe you were trying to alert the  
13 department to discrimination?

14          **A.** In my mind, I was, because that's why I wanted  
15 the member of the EEOC present during any subsequent  
16 interviews to insure that discrimination didn't occur.

17          **Q.** Now, you were also asked some questions about  
18 being the President of the Police Officers Association;  
19 do you recall those questions?

20          **A.** Yes.

21          **Q.** Being President of the Police Officers  
22 Association, that is not selected by the command ring,  
23 correct?

24          **A.** No.

25          **Q.** It was an elected position?

1           **A.**    Yes.

2           **Q.**    Who elects you?

3           **A.**    The members of the Police Association.

4           **Q.**    And what's the highest rank of a member of the  
5 Police Association can be?

6           **A.**    Chief.

7           **Q.**    Member of the Police Association?

8           **A.**    Yes.

9           **Q.**    The Chief can be?

10          **A.**    Any member, any active commissioned police  
11 officer can join the Police Officers Association  
12 regardless of rank, but they do restrict that no rank  
13 above Sergeant can run for and achieve an elected  
14 position on the executive board.

15          **Q.**    Is the rank and file of the Association  
16 primarily Officers and Sergeants, or are there Captains  
17 and Lieutenants, Majors and Colonels in there?

18          **A.**    There are. The breakdown pretty much follows  
19 the line of the police department. Obvious, there is  
20 one Chief. There is a handful of Colonels, handfuls of  
21 Majors, 12 or so Captains, hundred or so Lieutenants,  
22 200 or so Sergeants, the rest are patrol officers or  
23 police officers in that rank.

24          **Q.**    Do the command rank officers vote for  
25 President of the Association?

1           **A.** Yes, they do.

2           THE COURT: When you state all of those  
3 numbers and stuff, are you saying all of those people  
4 are members of the Police Officer's Association?

5           THE WITNESS: No, I was giving the example  
6 about a breakdown in the amount of people.

7           THE COURT: I didn't understand.

8           MS. PETRUSKA: Let me clarify, because I think  
9 the Judge is asking an important distinction. You gave  
10 us the number of how many people are in those ranks.

11          THE COURT: In the department.

12          THE WITNESS: In the department, yes, ma'am,  
13 roughly.

14          **Q.** (By Ms. Petruska) My question was -- thank  
15 you, Judge -- my question was how many of the people  
16 are actually members of the Association?

17          **A.** I don't have the exact number, but we do have  
18 numbers of all ranks. I believe the current Chief is  
19 also a member of the Association.

20          **Q.** Okay. Let me ask you this way then, do you  
21 consider being President of the Police Officers  
22 Association a career-enhancing position?

23          **A.** No, no, probably the opposite.

24          **Q.** Why not?

25          **A.** Just by the nature of it. It puts you at

1 odds, or an adversarial position, with the management  
2 of the police department.

3 **Q.** Anything else you want to add before I sit  
4 down about why you would not consider the Presidency of  
5 the Association to be a career-enhancing assignment?

6 **A.** I can only speculate on opinions of  
7 Commanders. No, I don't have anything to add.

8 MS. PETRUSKA: Then that's all of the  
9 questions I have, your Honor.

10 THE COURT: You may step down. You may call  
11 your next witness.

12 THE WITNESS: Thank you.

13 MS. PETRUSKA: Plaintiff will call Sergeant  
14 Deborah Boelling.

15 THE COURT: Ma'am, if you step up here to the  
16 clerk to be sworn.

17 SGT. DEBORAH BOELLING,

18 being produced and sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. BARTH:

21 **Q.** Good afternoon. Can you please introduce  
22 yourself to the jury?

23 **A.** My name is Deborah Boelling.

24 **Q.** You are currently a Sergeant with the St.  
25 Louis Metropolitan Police Department?

1           **A.** That's correct.

2           **Q.** Are you on duty today?

3           **A.** I'm not. I'm off.

4           **Q.** How many years have you been a police officer  
5 with the St. Louis Metropolitan Police Department?

6           **A.** 19.

7           **Q.** 19 years?

8           **A.** Correct.

9           **Q.** And during your tenure as a police officer  
10 with the department, have you been recognized with any  
11 awards or special achievements?

12          **A.** I have.

13               MS. TUCKER: Objection, relevance.

14               THE COURT: Overruled.

15          **Q.** (By Ms. Petruska) Your answer was yes?

16          **A.** It was. I have several awards.

17          **Q.** What awards are those?

18          **A.** I received three Chief letters of  
19 commendation. I received four or five awards of  
20 excellence. I have been awarded the officer of the  
21 month. I have been awarded a leadership award of  
22 excellence. I think that's about it.

23          **Q.** And what are -- what's a letter of  
24 commendation from the Chief?

25          **A.** It is where the Chief recognizes you for doing

1 something exemplary while in the line of duty.

2 **Q.** When were you promoted to the rank of  
3 Sergeant?

4 **A.** November of 2001.

5 **Q.** Before you were promoted, Sergeant, did you  
6 ever provide any training to new officers?

7 **A.** I did. I was a field training officer for a  
8 number of years before I was promoted.

9 **Q.** What is a field training officer?

10 **A.** When a recruit graduates the academy, they go  
11 into police work. It is like on-the-job training.  
12 They are paired up with an officer who trains them,  
13 teaches them how to apply the book knowledge they  
14 learned at the academy toward police work, helps them  
15 through report writing, probable cause for car stops,  
16 how to handle and talk to people on the scene, things  
17 like that.

18 **Q.** How long were you a field training officer?

19 **A.** About four years.

20 **Q.** What is the process that you follow to become  
21 a field training officer?

22 **A.** They post a position department-wide for field  
23 training officers. You have to complete a commissioned  
24 interview sheet and essentially apply for it. It has  
25 to be approved through your chain of command. Then it



1 is forwarded to the academy. They have the ultimate  
2 approval to accept you as a training officer.

3 **Q.** So that is something that you sought out to  
4 do, correct?

5 **A.** Correct.

6 **Q.** Then is that the only thing you did to train  
7 new officers before you were Sergeant?

8 **A.** Yes.

9 **Q.** Then after you were promoted to Sergeant, did  
10 you hold any positions that provided training to new  
11 officers?

12 **A.** I did. I was assigned to the academy as the  
13 Field Training Coordinator; and basically, I oversaw  
14 everyone who was in the field training program at the  
15 time, both the field training officers and the  
16 probationary police officers.

17 **Q.** Was that a permanent full-time position?

18 **A.** Yes, ma'am.

19 **Q.** Were you assigned permanently to the police  
20 academy while you were the Field Training Coordinator?

21 **A.** Yes, I was.

22 **Q.** What was the process that you underwent to  
23 become a Field Training Coordinator?

24 **A.** Same thing. It was an advertised position  
25 department-wide. I applied for the position, completed

1 a commissioned interview sheet, got approval from my  
2 chain of command, and then forwarded it onto the  
3 academy. Then I had to go through an interview  
4 process.

5 **Q.** And how long did you serve as the Field  
6 Training Coordinator at the police academy?

7 **A.** That was a little bit over a year.

8 **Q.** What was the year that you did that?

9 **A.** 2003.

10 **Q.** After your Field Training Coordinator  
11 position, was there any other position that you held  
12 that provided training to new police officers?

13 **A.** Before the Assistant Director position or?

14 **Q.** Yes?

15 **A.** No.

16 **Q.** Then at some point, you were appointed to the  
17 position of the Assistant Director to the police  
18 academy?

19 **A.** Correct.

20 **Q.** What year was that?

21 **A.** 2009.

22 **Q.** You were appointed to that position as a  
23 Sergeant?

24 **A.** Yes, ma'am.

25 **Q.** Have you ever taken the Lieutenant's exam?

1           **A.**   Several times.

2           **Q.**   Have you ever taken the Lieutenant's exam  
3 since you have been appointed to the Assistant Director  
4 position?

5           **A.**   No.

6           **Q.**   When you were the Assistant Director of the  
7 police academy, what were your duties?

8           **A.**   Well, I was involved with recruit planning. I  
9 had to repair their schedule for their 26 or 28 weeks  
10 of training. I had to manage six budgets that were  
11 routed through the academy. I sat in recruit classes  
12 to evaluate instructors.

13                   I did some training of the recruits. I went  
14 through the rules and regulations, introductions, I  
15 covered the Field Training Program with them when they  
16 were there, but that was more towards the end of their  
17 training. I did a number of things.

18           **Q.**   What is the importance of having experience in  
19 training officers to the position of Assistant  
20 Director?

21           **A.**   When recruits enter the academy, this is a  
22 major stepping stone for them to mold them into young  
23 police officers. They are very impressionable.  
24 Generally, they are very young. It is a para military  
25 structure, so we want to teach them about our rules and

1 regulations and rank, and how important that is, and  
2 appearances mean a lot. Your interaction with them  
3 means a lot. It is a basis for which they are going to  
4 be successful in their career as an officer.

5 **Q.** And would you say when you were the Assistant  
6 Director of the academy, that you had shown a passion  
7 for training prior to taking that position?

8 **A.** Absolutely.

9 **Q.** Would you say it is important to have a  
10 passion for training new officers in the position of  
11 Assistant Director?

12 **A.** Without a doubt.

13 **Q.** At the time of your appointment, who was your  
14 immediate supervisor?

15 **A.** Lieutenant Anthony McDuffy.

16 **Q.** At some point, did Lieutenant Muxo become your  
17 district supervisor?

18 **A.** He did.

19 **Q.** When did that occur?

20 **A.** Early 2010, I believe, March, February maybe.

21 **Q.** And at some point, you were transferred out of  
22 the academy?

23 **A.** Correct.

24 **Q.** And do you recall that the open position for  
25 Assistant Director was posted?

1           **A.** It was.

2           **Q.** Do you recall when that occurred?

3           **A.** Just prior to my transfer. I think it was  
4           sometime in September of 2010.

5           **Q.** And prior to that job being posted, did you  
6           have any conversations with Lieutenant Muxo as to who  
7           would replace you in the position of Assistant  
8           Director?

9           **A.** I did. I had several informal conversations  
10          with him.

11          **Q.** What did he tell you?

12               MS. TUCKER: Objection, hearsay.

13               THE COURT: Overruled, for the reasons stated  
14          in the pretrial rulings, go ahead.

15               THE WITNESS: He told me that Harris wanted a  
16          black female in the position, and that there no way  
17          they were going to put a white male in that position.

18          **Q.** (By Ms. Barth) And he told you that even  
19          before the position was posted?

20          **A.** He did.

21          **Q.** And did you have any conversations with  
22          Lieutenant Muxo about who you thought would be the good  
23          person for the position of Assistant Director?

24          **A.** I did. I recommended David Bonenberger.

25          **Q.** Why did you make that recommendation?

1           **A.** I worked with David in the Third District. I  
2 got to know his style of police work. He is a very  
3 good investigator, very good report writer, very  
4 passionate about the job. And then later in his  
5 career, he taught at the academy. He assisted with  
6 driver's training, and I think patrol or criminal  
7 investigation, but he had written several lesson plans.  
8 Those lesson plans were so well-written that after he  
9 had left the academy, we were still using them by the  
10 instructors.

11           He did still come down to the academy, even  
12 after transfer, to do some adjunct work, training, do  
13 training for both recruits and department members who  
14 had been involved in accidents. He was still involved,  
15 even though he wasn't personally assigned to the  
16 academy.

17           **Q.** So would you say that Sergeant Bonenberger had  
18 shown a passion for training new police officers?

19           **A.** Absolutely.

20           **Q.** Then after the job was posted, did you have  
21 any other conversations with Lieutenant Muxo about who  
22 would be put in the position?

23           **A.** I had asked him who he was interested in, he  
24 had mentioned a specific person.

25           **Q.** Who was that?

1           **A.**   Angela Taylor.

2           **Q.**   Did he tell you why they were looking to put  
3   Angela Taylor into the position?

4           **A.**   Just again, he had said that Harris wanted a  
5   black female in that position.

6           **Q.**   Did he say why they would not put David  
7   Bonenberger into the position?

8           **A.**   No.

9           **Q.**   Did he respond to your suggestion that  
10   Sergeant Bonenberger would be a good choice in any way?

11          **A.**   He was indifferent. I wouldn't say he said  
12   anything negative or positive per se, other than there  
13   is no way they are going to let me put a white man in  
14   there.

15                MS. BARTH: I have no further questions of the  
16   witness -- sorry.

17          **Q.**   (By Ms. Barth) Sergeant, what was the race of  
18   Lieutenant McDuffy?

19          **A.**   He was a black male.

20                THE COURT: Cross-examination?

21                               **CROSS-EXAMINATION**

22   BY MS. TUCKER:

23          **Q.**   Good afternoon, Sergeant Boelling?

24          **A.**   Good afternoon.

25          **Q.**   When you were a field training officer, as a

1 field training officer, I think you testified that you  
2 were basically provided on-the-job training, or helping  
3 with the on-the-job training for the probationary  
4 officers?

5 **A.** Correct.

6 **Q.** You basically guided them, told them, or  
7 directed them with regard to -- for lack of a better  
8 term -- good and bad policing; is that correct?

9 **A.** That would be correct.

10 **Q.** Now you and Lieutenant Muxo are not friends;  
11 is that correct, you are not personal acquaintances.  
12 You don't have relations outside of the workplace; is  
13 that correct?

14 **A.** Correct.

15 **Q.** You have known Sergeant Bonenberger since the  
16 time, were you in the academy together or --

17 **A.** No, he was a class or two ahead of me. So no,  
18 we weren't in the academy together. We worked together  
19 in District 3.

20 **Q.** You worked together with him for approximately  
21 seven years?

22 **A.** Roughly, yes.

23 **Q.** When you allege these comments were made by  
24 Lieutenant Muxo, was there anybody else present at that  
25 time?



1           **A.** There were several conversations of this  
2 nature, and on a couple of those occasions, Sergeant  
3 Tucker was present in my office.

4           **Q.** All right. When you were having these  
5 conversations with Lieutenant Muxo, you knew that you  
6 were going to be transferred out of the position,  
7 correct?

8           **A.** Correct.

9           MS. TUCKER: I don't have anything else.  
10 Thank you.

11           THE COURT: Any redirect?

12           MS. BARTH: No, your Honor.

13           THE COURT: You may step down.

14           THE WITNESS: Thank you.

15           THE COURT: You may proceed.

16           MS. PETRUSKA: We will have to see if our  
17 reader is here.

18           MS. BARTH: And can we take a quick break to  
19 discuss with the defendants.

20           THE COURT: Yeah, members of the jury, we will  
21 be in recess for two minutes, so you can go to the jury  
22 room for a very short time. We will have you back in.

23                   (At 4:37 p.m., the Proceedings stood in  
24 temporary recess.)

25           THE COURT: Tell me what we need to know.

1 MS. BARTH: Based upon your rulings earlier  
2 today, we have a copy that has been stricken to what  
3 needs to be stricken. We just need a copy made for the  
4 reader. So I have one as well. Can we do it by hand?

5 THE COURT: You need time to go copy a  
6 deposition. How long is this going to take and where  
7 is your photocopier that you are going to use.

8 MS. BARTH: I have another copy that I'll go  
9 through, if you don't want to make a copy. It will  
10 take a few extra minutes to do that.

11 THE COURT: This is from the rulings I did at  
12 8:30 this morning.

13 MS. BARTH: Yes.

14 THE COURT: Okay. How long is the deposition  
15 that we need to photocopy.

16 MS. BARTH: 30 something pages.

17 THE COURT: Okay. We will copy it for you.  
18 How many copies?

19 MR. HOELL: We are going to be working off the  
20 same copy as well. One for the witness, I believe.

21 THE COURT: One for the witness then, let's go  
22 off the record.

23 (A discussion was held off the record.)

24 THE COURT: Back on the record.

25 MR. HOELL: Defendant would like to revisit

1 the issue prior to reading the deposition of the  
2 admissibility of the 2012 -- plus, there is evidence  
3 based on the testimony of the plaintiff and his views  
4 on how this transfer, which I did not receive, would  
5 benefit and aid his career, and that the allegation  
6 even could have been made to the jury that this is  
7 somehow a clearer path or --

8 THE COURT: Is this a deposition portion?

9 MR. HOELL: Correct.

10 THE COURT: We only have one copy of the  
11 deposition. Show me the page and line we are talking  
12 about. Tell me exactly what you are asking me to do.

13 MS. BARTH: Page 27.

14 THE COURT: Tell me the page lines you are  
15 asking me to allow in evidence that I previously  
16 excluded, page 37, starting at eight. Where does the  
17 excerpt end that you want me to include.

18 MR. HOELL: I gave away my copy. It goes on  
19 for a couple of pages, I believe.

20 THE COURT: Is this something I ruled on this  
21 morning. I don't recall it. This was part of the  
22 motion in limine?

23 MR. HOELL: Correct. It ends on line 11 on  
24 page 39.

25 THE COURT: All right. Let me review these

1 pages. This refers to an exhibit. Is that something  
2 that's going to be used here or not.

3 The first question is: "I'm now showing you  
4 Plaintiff's Exhibit 34. Please tell me if you have  
5 seen that before.

6 Answer: Yes, yes sorry."

7 You want that in evidence, but you are not  
8 going to show us Plaintiff's Exhibit 34, or are you  
9 going to show it.

10 MR. HOELL: If I got that evidence in, then I  
11 probably would.

12 THE COURT: Okay hold on for a second, is your  
13 argument that, well, he couldn't have been damaged by  
14 this, because he wouldn't have been promoted anyway?

15 MR. HOELL: That regardless of the position he  
16 held at the police department, it comes down to how you  
17 are doing, high-profile or not.

18 THE COURT: And your response, Ms. Petruska,  
19 why isn't that relevant, even if he had gotten this  
20 job, he still wouldn't have qualified for a promotion.

21 MS. PETRUSKA: Because we are not claiming  
22 that it is an element of damages. We are not claiming  
23 any lost wages as an element of damages, and it would  
24 be like saying that firing somebody wasn't an adverse  
25 employment. The issue is whether it is an adverse

1 employment action.

2 THE COURT: No. This is an issue of damages.  
3 Your witnesses said there are bad things that happen to  
4 me, because I didn't get the job. Part of why I wanted  
5 the job it could lead to a promotion. This really is  
6 not an issue of whether it is an adverse employment  
7 action. It is a separate issue that he is claiming  
8 damages. He said all of the things happened, because I  
9 didn't get the job. They were emotional and all of  
10 these things, and it would have been a better job,  
11 because I would have an opportunity for promotion. So  
12 why isn't it relevant on the damages aspect?

13 MS. PETRUSKA: The only thing that came up in  
14 terms of an opportunity for promotion was when there  
15 was a question by Ms.--

16 THE COURT: Yeah, I understand.

17 MS. PETRUSKA: -- Tucker, and I objected.

18 THE COURT: Hold on just a second. Why don't  
19 you bring the jury in.

20 I'm going to send the jury home, because I do  
21 want to hear argument on this. I think I'm actually  
22 not totally sure these two things were in each other.  
23 The issue is whether this is an adverse employment  
24 action verses -- you know, damages issues. I think --  
25 I'm not sure the way I just stated it is correct.

1 (At 4:47 p.m., the Proceedings resumed in open  
2 court.)

3 THE COURT: You may be seated. So members of  
4 the jury, you are going to get a slightly early  
5 afternoon today, because we do have to talk about  
6 something with regard to this next evidence, and we are  
7 going to let you go, so we can talk about it after you  
8 are gone, rather than making you wait in the jury room.  
9 It is almost 5 o'clock.

10 I'm going to remind you the instructions that  
11 I gave you earlier today, that during this recess, or  
12 any other recess, you must not discuss the case with  
13 anybody. You must not communicate in any way, whether  
14 over the internet, or texting on your phone, or any  
15 way, and you may not do any research about the case.

16 I know when you go home after the first day of  
17 the jury trial, people are going to say what happened,  
18 what happened. What's the case about. It is tempting  
19 to say it is about a police officer, and the city, and  
20 please don't do that, because you never know when  
21 somebody, your next door neighbor, your husband, you  
22 spouse or kids would say, I know somebody has had  
23 something similar happen, or I saw something like that  
24 on TV, not this case, I assure you, but all of a sudden  
25 you are hearing things that might influence your

1 decision here, even though you would try not to do it,  
2 I'm sure.

3 Here is what you can tell them, you can say:  
4 "Look I got picked on a jury. It is a civil case. I'm  
5 in Federal Court. It is Judge Perry's Court. I can  
6 tell you all about it either on Wednesday or Thursday,  
7 when it is all over."

8 Once it is finished, you are free to talk  
9 about the case. But essentially, you can't talk or  
10 communicate in any way, and even with each other, that  
11 you cannot talk about the case until you have it with  
12 deliberations.

13 With that, you are excused, and we'll start at  
14 9 a.m. tomorrow. You can come earlier, it will be open  
15 by 8:30 or earlier. If you want to come earlier, you  
16 can. I do often warn people that -- I can't remember  
17 what I always say -- the traffic will be easier, but  
18 the parking will be harder, because you are coming a  
19 little later than you did this morning, if you are not  
20 used to driving downtown.

21 I can't be sure about any of those things. So  
22 I'll see you in the morning at 9 a.m., just leave your  
23 books on the chairs, then they will be there for you in  
24 the morning, thank you very much.

25 (At 4:50 p.m., the Proceedings stood in

1 temporary recess.)

2 THE COURT: Here is the issue that I need you  
3 all to clarify for me, and so the evidence is that the  
4 plaintiff took the Lieutenant's test in 2012, but did  
5 not score in a way that would have allowed him to be  
6 promoted to Lieutenant in any event, right?

7 MR. HOELL: 42 people would have had to be  
8 promoted ahead of him, before he would be considered.

9 THE COURT: Right, so I think the defendant's  
10 argument is actually twofold, and I think I was saying  
11 this was one, and not the other, and I'm not sure if  
12 there is an argument about whether not getting this  
13 position was an adverse employment action, and argument  
14 as well, it could lead to promotion, but because it  
15 wasn't actually a promotion.

16 The plaintiff has stated why he believes it  
17 was a better job, a different job, it gave him an  
18 opportunity for promotion, even though he didn't get a  
19 higher rank. That is why he believes it meets the  
20 legal definition of an adverse employment action.  
21 That's what he said more or less.

22 The other argument is well, he wouldn't have  
23 been promoted to Lieutenant anyway, because he didn't  
24 rank high enough on the test. So he can't claim any  
25 loss for not getting a promotion, but the plaintiff is



1 not claiming a promotion. He is not claiming that he  
2 would have made Lieutenant necessarily. He is not  
3 claiming any lost wages or differential in the wages he  
4 would have gotten as a Lieutenant.

5 So why is the performance on the 2012  
6 relevant. What does it go to. Is it going to damages.  
7 Is it going to adverse employment action or both?

8 MR. HOELL: The argument would be both, your  
9 Honor, especially when this witness that it came up  
10 with, Mr. Robins, his whole point is that based on his  
11 time as a member of the Board of Police Commissioners,  
12 Assistant Director position is high-profile, and he  
13 testified, I believe, that six out of nine people who  
14 have held this have gone onto Lieutenant.

15 He is laying that foundation that you have  
16 this job, you become Lieutenant, and I think that opens  
17 the door to well, not Sergeant Bonenberger, based on  
18 how he tested on this 2012 test.

19 THE COURT: Is that what he says here,  
20 Ms. Petruska. I never read the deposition, so this may  
21 well -- I don't know why you are calling him as expert  
22 witness. I didn't even know there were going to be any  
23 expert witnesses, but since nobody has objected to  
24 expert testimony --

25 MR. HOELL: I also point out, your Honor, the

1 results of -- Exhibit 34, the 2008, 10 and 12 Sergeant  
2 promotion list is a plaintiff exhibit. We have not  
3 objected to that. They may -- this is on their exhibit  
4 list for trial as well.

5 THE COURT: So what does this -- what is your  
6 response, Ms. Barth?

7 MS. BARTH: My response is you granted our  
8 motion in limine in pretrial where this deposition had  
9 already taken place.

10 THE COURT: I said they could approach the  
11 bench if they thought the door had been opened. I want  
12 -- you tell me, not what I said, or what the previous  
13 rulings were, tell me why this person is testifying,  
14 and what they say, because if this is valid  
15 cross-examination of his expert testimony, then it  
16 seems to me, I excluded it erroneously.

17 MS. BARTH: His testimony is about the fact  
18 that within the department, this is a career-enhancing  
19 position, not necessarily that you are going to be  
20 promoted immediately to Lieutenant, which they did  
21 cross-examine on that, and that is included in the  
22 deposition.

23 My understanding was if David Bonenberger  
24 opened the door to it, they were going to reargue it.

25 THE COURT: If you, the plaintiff, opened the

1 door to it, but I didn't -- no one told me that this  
2 was what this expert witness was going to be saying.  
3 Can you give me what of this deposition you are going  
4 to read into evidence, so I can read it tonight, and  
5 see if this is proper cross-examination.

6 MS. BARTH: Sure. We can leave you -- I have  
7 a blacked-out copy of things we definitely agreed to.  
8 We had already agreed to strike the portions about the  
9 2012 Lieutenant's exam.

10 THE COURT: Right, that's why he said. I'm  
11 asking you to reconsider it. That's what he said.

12 MS. BARTH: There is an asterisk on our copy,  
13 because we had agreed, but I can send you two copies,  
14 if you want to see.

15 THE COURT: Yeah, I just need one copy. You  
16 can write a note on it saying: "This is the part that  
17 he wants in. That we want out."

18 MS. BARTH: I'm just -- there is an asterisk.  
19 It may be hard for you to read.

20 THE COURT: Here is another copy of the  
21 deposition.

22 MR. HOELL: That's my only copy.

23 THE COURT: You can have it back. I need you,  
24 all right, now in the next five minutes, to give me  
25 what it is the plaintiff wants to introduce, and what

1 it is the defendant wants to introduce. What you have  
2 agreed on, and then what is disputed. If you have one  
3 -- if it is just that has a big X through it, as  
4 opposed to a giant magic marker through it, I can  
5 probably read it.

6 MS. BARTH: You can have it.

7 THE COURT: Okay. Let me make sure that I  
8 understand. The part that I had excluded is on page --

9 MR. HOELL: Starts on page 37, your Honor.

10 THE COURT: Okay. The disputed part starts on  
11 37 at --

12 MR. HOELL: Line eight.

13 THE COURT: Okay. To, when does it end?

14 MR. HOELL: It ends at page 39, line 12, would  
15 be the last part in dispute probably.

16 THE COURT: Probably line seven, since that's  
17 the answer, and the rest is just an objection, right.  
18 It won't be.

19 MR. HOELL: Yes.

20 THE COURT: So line seven. Okay. I will look  
21 at this, and I want everybody to be here at 8:45 in the  
22 morning. I'll go on the record at 8:45. I'll give you  
23 my rulings on this at that point. What else do we need  
24 to discuss before we start tomorrow?

25 MS. BARTH: The only thing, Judge, if you want

1 me to hand you a copy of what we had written on the  
2 jury instructions for the deposition testimony.

3 THE COURT: If you have an instruction you  
4 wish me to give before this testimony, by all means  
5 tell me.

6 MR. HOELL: Judge, for scheduling purposes, I  
7 don't know if they have an idea how many more  
8 witnesses.

9 THE COURT: What is your estimation of when  
10 you will finish?

11 MS. PETRUSKA: Probably sometime tomorrow  
12 morning.

13 THE COURT: That tells the defense what they  
14 need to know. So you all are saying you would like me  
15 to give this testimony?

16 MR. HOELL: Prior to the reading, yes, your  
17 Honor.

18 THE COURT: Yeah. So I will do this, although  
19 I may not say -- even say his name.

20 Here is the question, every time we have a  
21 reading of a deposition, isn't the person reading it  
22 not the witness. Because by definition, if it was the  
23 witness, we wouldn't be reading the deposition, right?

24 MR. HOELL: Correct.

25 THE COURT: But you want me to say this

1 witness reading is not the witness, because the witness  
2 isn't here. This is somebody else reading the answers.

3 I'll do that. I'm telling you that's what  
4 always happens. I don't mind reading this. I'm just  
5 trying to tell you to think through the logic of it.  
6 I'm giving you grief at the end of the first day of  
7 trial, and I apologize. You all have been working  
8 hard.

9 Is there anything else we need to discuss at  
10 all in the plaintiff's case, so we will be ready for  
11 any unexpected things, or anything else I need to  
12 resolve?

13 MS. TUCKER: Your Honor, my only other  
14 question is whether there is any other depositions?

15 THE COURT: Is this the only deposition  
16 testimony that you are going to read?

17 MS. PETRUSKA: You asked me about --

18 THE COURT: Hold on, off the record.

19 (A discussion was held off the record.)

20 MS. PETRUSKA: There maybe objections, Judge  
21 about one of the readings, but I need to look at that  
22 tonight to figure out if I'm really going to use it,  
23 which I may not, so there wouldn't be any other issues  
24 about reading. That's the Mokwa deposition.

25 THE COURT: You all will discuss it tonight.

1 MS. PETRUSKA: I told -- yes, I told Ms.  
2 Tucker that I would look at it when I get back to the  
3 office, and I would e-mail her, so that we can figure  
4 out where we are and know where we are when we come in  
5 tomorrow.

6 THE COURT: Okay, because I don't really want  
7 to spend a lot of time with the jury in the jury room  
8 while we're discussing something we could have  
9 discussed. Do we need to come in earlier tomorrow,  
10 just in case?

11 MS. PETRUSKA: I don't think I'm going to use  
12 it.

13 THE COURT: Okay 8:45, I will see you then,  
14 that's what we will do.

15 I do apologize for giving you guys grief  
16 today. I know you are working hard, but some of the  
17 stuff you need to think through. Court is in recess.

18 (End of proceedings)  
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C E R T I F I C A T E

I, Lisa M Paczkowski, Registered Professional Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 128 inclusive and that this reporter takes no responsibility for missing or damaged pages of this transcript when same transcript is copied by any party other than this reporter.

Dated St. Louis, Missouri, this 3rd day of September, 2014.

  
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/s/Lisa M Paczkowski  
Lisa M Paczkowski, CCR, CSR, RPR  
Official Court Reporter